

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

US EPA RECORDS CENTER REGION 5



515518

931697

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H.  
Humphrey, III, its Department  
of Health, and its Pollution  
Control Agency,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORA-  
TION; HOUSING AND REDEVELOPMENT  
AUTHORITY OF ST. LOUIS PARK;  
OAK PARK VILLAGE ASSOCIATES;  
RUSTIC OAKS CONDOMINIUM, INC.;  
and PHILIP'S INVESTMENT CO.,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

AFFIDAVIT OF KATHLEEN M.  
MARTIN IN SUPPORT OF THE  
CITY OF ST. LOUIS PARK'S  
MEMORANDUM IN SUPPORT OF  
THE MOTION OF THE UNITED  
STATES AND THE STATE OF  
MINNESOTA FOR SUMMARY  
JUDGMENT ON REILLY'S  
THIRD AFFIRMATIVE DEFENSE  
TO THE UNITED STATES  
COMPLAINT AND FOURTH  
AFFIRMATIVE DEFENSE TO THE  
STATE'S COMPLAINT (NPDES)

STATE OF MINNESOTA) ) ss.:  
COUNTY OF HENNEPIN)

**Kathleen M. Martin, being first duly sworn on oath states:**

1. That she is an attorney with the law firm of Popnam, Haik, Schnobrich, Kaufman & Doty, Ltd., 4344 IDS Center, Minneapolis, Minnesota 55402, which is counsel for the plaintiff-intervenor City of St. Louis Park.

2. That the following exhibits, attached to this affidavit, are true and correct copies to the best of her knowledge:

EXHIBIT 1                      Complaint of City of St. Louis Park  
and State of Minnesota, filed October  
2, 1970, State of Minnesota, et. al.  
v. Reilly Tar and Chemical Corp.,  
Minn. Fourth Judicial District, File  
No. 670767.

**EXHIBIT 2            Reilly Tar & Chemical Corporation's  
                         Response to City of St. Louis Park's  
                         Requests for Admission and  
                         Interrogatory, July 14, 1983.**

**EXHIBIT 3                      Report of Eugene A. Hickok &  
Associates, "Ground-Water  
Investigation Program at St. Louis  
Park", September, 1969.**

**EXHIBIT 4                  Letter of Chris Cherches to Herb  
Finch, November 3, 1969.**

**EXHIBIT 5                      Memorandum of R. E. Frazier to John  
P. Badalich, April 20, 1980.**

**EXHIBIT 6**                      **Memorandum of W. A. Justin to H. L. Finch, April 21, 1970.**

**EXHIBIT 7                  Letter of R. E. Frazier to Harvey  
McPhee, August 24, 1970.**


**EXHIBIT 8**                      **Letter of Ronald M. Burd to Harvey J. McPhee, November 5, 1970.**

- EXHIBIT 9 Excerpts from Transcript of  
Deposition of Herbert L. Finch.
- EXHIBIT 10 Memorandum of E. A. Hickok &  
Associates, October 18, 1969.
- EXHIBIT 11 Memorandum of Herbert Finch to T. J.  
Ryan, December 14, 1970.
- EXHIBIT 12 Letter of Herbert Finch to R. J.  
Boyle, October 15, 1970.
- EXHIBIT 13 Letter of Thomas Reiersgord to Robert  
J. Lindall, July 23, 1971.
- EXHIBIT 14 Letter of Jack Van de North to Rolfe  
A. Worden, June 15, 1973.
- EXHIBIT 15 Excerpts from Transcript of  
Deposition of Rolfe A. Worden.



Kathleen M. Martin

Subscribed and sworn to before  
me this 29 day of March, 1984.

  
Notary Public

0352e



Commission expires: May 7, 1986

EXHIBIT 1

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota, by the  
Minnesota Pollution Control Agency,  
and the City of St. Louis Park,

Plaintiffs,

vs.

Reilly Tar & Chemical Corporation,

Defendant.

COMPLAINT

I

Plaintiff Minnesota Pollution Control Agency is an Agency of the State of Minnesota which is charged by Minnesota Statutes 1962, Chapters 115 and 116, with the duty to administer and enforce all laws and to promulgate, administer, and enforce all regulations adopted by it relating to pollution of water or air of the state, which laws and regulations have general application throughout the state.

II

Plaintiff City of St. Louis Park is a municipal corporation duly organized and existing under the laws of the State of Minnesota.

III

Defendant Reilly Tar & Chemical Company is a corporation established under the laws of the State of Indiana and registered to do business in the State of Minnesota.

Defendant Reilly Tar and Chemical Company is engaged in the business of distilling coal tar in order to produce creosote oil and impregnating wood products with such creosote oil or creosote solutions in St. Louis Park, Minnesota.

V

Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the air of the City of St. Louis Park and the State of Minnesota, in violation of law and administrative regulations, including, but not limited to Air Pollution Control Regulation 9 (APC 9) and City of St. Louis Park Air Pollution Ordinance No. 1034, both of which forbid the emission of odorous matter such as to cause an objectionable odor.

VI

Defendant is now causing, and has caused in the past, emission of air contaminants that are obnoxious, offensive and injurious to human health, welfare, comfort, and property. These acts of defendant are without right, power or authority, and are a public nuisance.

VII

Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law and administrative regulations, including, but not limited to Water Pollution Control Regulation 4 (WPC 4), which, among other things, prohibits persons from storing or keeping substances or allowing them to remain upon any site without reasonable safeguards adequate to prevent the escape or movement of the substance or a solution thereof.

facility whereby pollution of any waters of the State might result therefrom, and which provision requires the owner of such stored substances or other person responsible therefor to obtain from plaintiff Minnesota Pollution Control Agency a permit for the use of the site for the storage of liquid substances as provided in WPC 4.

#### VIII

Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law and administrative regulations, including, but not limited to Water Pollution Control Regulation 14 (WPC 14), which, among other things, prohibits the discharge of raw or treated sewage, industrial waste or other wastes into any intrastate waters of the state so as to cause any nuisance conditions or other offensive or harmful effects. Said WPC 14, among other things, also requires existing discharges of inadequately treated sewage, industrial waste or wastes to be abated, treated or controlled so as to comply with the applicable standards.

#### IX

Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law and administrative regulations, including, but not limited to Water Pollution Control Regulation 23 (WPC 23), which, among other things, prohibits the discharge of sewage, industrial waste or other waste effluents to the intrastate waters of the State without providing such treatment or control as may be necessary to achieve compliance with the applicable limiting permissible concentrations of quality and purity stated therein.

X.

Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law and administrative regulations, by, among other things, failing to apply for and obtain necessary permits relating to such water pollution control equipment as it may presently operate.

XI

Minnesota Statutes 1969, Section 116.00, Subdivision 2, authorizes plaintiff Agency to enforce Minnesota Statutes 1969, Section 116.01 to 116.09 and air pollution control regulations and standards promulgated pursuant thereto by injunction. Minnesota Statutes 1969, Section 115.47, Subdivision 1, authorizes plaintiff Agency to enforce Minnesota Statutes 1969, Sections 115.01 to 115.09 and water pollution control regulation and standards promulgated pursuant thereto by injunction.

XII

Unless restrained and enjoined, defendant will continue to emit air and water contaminants from their premises that are obnoxious, offensive to human health, welfare, comfort and property and which are a public nuisance. Plaintiffs have no plain, speedy, or adequate remedy at law.

WHEREFORE, plaintiffs seek an Order of this Court temporarily and permanently enjoining defendant from any further pollution of the air and waters of the State of Minnesota in violation of law



and administrative regulations, and for such additional relief as the Court may deem appropriate.

Dated October 2, 1970.

**DOUGLAS M. HEAD**  
Attorney General

By S/ Robert J. Lindall  
~~Robert J. Lindall~~  
Special Assistant Attorney General

Attorneys for Plaintiff Minnesota  
Pollution Control Agency  
336 Minn. State Board of Health Bldg.  
717 Delaware Street, S.E.  
Minneapolis, Minnesota 55440  
Phone: 612/378-1320 (Ext. 15)

**POPHAM, HAIK SCHNODRICH, KAUFMAN & DOTY**  
Ltd.

By S/ Wayne G. Popham  
~~Wayne G. Popham~~  
900 Farmers & Merchants Bank Building  
Minneapolis, Minnesota 55402 335-9331  
Attorneys for City of St. Louis Park

**YNGVE, YNGVE & REIERGORD**

**ATTORNEYS AT LAW**

**6250 WAYZATA BOULEVARD**

**MINNEAPOLIS, MINN. 55416**

**July 23, 1971**

**844-9451**

**Y YNGVE  
IN YNGVE (1994-1998)  
IT B. YNGVE  
AS E. REIERGORD  
CALL G. ANDERSON  
LA REIERGORD**

**Office of Attorney General  
Minnesota Pollution Control Agency  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440**

**Re: Case No. 670767  
Calendar No. 78815  
State of Minnesota, et al vs.  
Reilly Tar and Chemical Corporation**

**ATTENTION: Robert J. Lindall  
Special Assistant Attorney General**

**Dear Mr. Lindall:**

**I was out of town when your letter, dated July 8, 1971, arrived concerning the calendar placement of the State's case vs. Reilly Tar and Chemical Corporation.**

**Perhaps you may not be aware that the company determined several months ago to close down their St. Louis Park plant and they are now in the process of doing so.**

**You may or may not also know that the company has offered the entire 80 acres to the city, and the city and the company are presently negotiating for the purchase of the property.**

**My present understanding is that the refinery portion of the operation will be discontinued in either August or September of 1971 and the wood treatment phase of the operation will be concluded in September of 1972. No new lumber has been delivered into the plant property for treatment for several months and the remaining operations are directed at completing the treatment of the lumber that was on hand when this decision was made. This decision was communicated to the city some time ago and the discussions about the sale to the city have been pending now for a number of months.**

**The company informed its employees of the termination of plant operations several months ago, but did not see fit to make any public announcement of this move and I do not believe that it was picked up by either of the Twin City**

**460321-400167**

**166013**

**EXHIBIT E**

Robert J. Linfall  
Special Assistant Attorney General  
July 23, 1971  
Continued - Page 2

newspapers or television.

At any rate, it seems to me that the issues in the lawsuit are moot except for the possibility of the counter-claim by the company for damages by reason of the flooding by the city. However, until we have a better chance to see how the sale negotiations work out, I do not believe it would be prudent to set the case up for trial. Therefore, I would suggest that you ask the clerk to strike the case for settlement, subject to being reinstated if the anticipated settlement fails to materialize.

Very truly yours,

YNGVE, YNGVE & REIERSGORD

Thomas E. Reiersgord

dcl  
cc: Wayne G. Popham

46001-1



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H.  
Humphrey, III, its Department  
of Health, and its Pollution  
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;  
HOUSING AND REDEVELOPMENT AUTHORITY  
OF ST. LOUIS PARK; OAK PARK VILLAGE  
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,  
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

REILLY TAR & CHEMICAL  
CORPORATION'S RESPONSE  
TO CITY OF ST. LOUIS  
PARK'S REQUEST FOR  
ADMISSIONS AND INTER-  
RAGORY

Reilly Tar & Chemical Corporation (hereinafter "Reilly"), makes the following responses to the Request for Admissions of St. Louis Park dated June 3, 1983.

Request No. 1. Over a period of years prior to the institution by the City and the State of the 1970 litigation against Reilly Tar ("1970 litigation"), the City had suspected that phenols from Reilly Tar's operations were entering the City's water system. Questions to Reilly Tar were answered with statements that any phenols in the water supply were from natural causes and not from the Reilly Tar's operations. State deposition Exhibit 97 is a true, authentic and genuine copy of a memorandum of W. J. McLellan to Mr. C. B. Edwards, dated October 14, 1940; St. Louis Park deposition Exhibit 53 is a true, authentic and genuine copy of a memorandum of C. B. Edwards to Mr. W. J. McLellan, dated November 4, 1940.

RESPONSE: Reilly admits the first and last sentence of this request, and admits that there was correspondence between the City and Reilly with respect to the source of the phenols, which correspondence speaks for itself.

Request No. 2. Although Reilly Tar at all times denied that it had contaminated the City's drinking water supply with phenols, it understood that the alleged phenolic contamination of the City's drinking water supply did not present a threat to public health. Reilly Tar believed that the only negative consequences of phenolic contamination of the City's drinking water supply were bad taste and/or bad odor.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. To admit or deny that "Reilly Tar believed" something would be ambiguous and confusing to the trier of fact in this matter. Without waiving this objection, Reilly admits ~~that many persons within the scientific community hold the view~~

that phenols are toxic in sufficiently large doses. Reilly also admits that the Amended Complaint in Intervention of the State of Minnesota, paragraph 36, alleges that the U.S. E.P.A. has promulgated regulations which classify phenol as a hazardous waste.

Request No. 3. In April 1970, the State Department of Health analyzed the City's wells for phenolic contamination. The Department of Health concluded that it did not believe that there was good evidence to substantiate a claim that the City's wells were contaminated with phenols. Reilly Tar was advised of the Department of Health's conclusions on April 21, 1970. St. Louis Park deposition Exhibit 44 is a true, authentic and genuine copy of a memorandum of Mr. W. A. Justin to Mr. H. L. Finch, dated April 21, 1970.

RESPONSE: Reilly admits the last sentence of this request. After reasonable inquiry, the information known or readily obtainable by Reilly is insufficient to enable Reilly to admit or deny the first sentence of this request. Reilly denies the remainder of the request.

Request No. 4. In October and/or early November, 1970 the Mellon Institute analyzed the City's drinking water wells for phenolic contamination. The Mellon Institute found that there were no phenols in the City's well water.

RESPONSE: Reilly admits that certain reports of the NUS Corporation dated in November of 1970 and which were obtained by Reilly through discovery in 1979, report that no phenols were detected in the waters tested. Reilly denies any implication that these reports were given to Reilly in 1970 and specifically alleges that they were not.

Request No. 5. On or about October 2, 1970, the State, through its Pollution Control Agency, and the City commenced an action in Hennepin County District Court of the State of Minnesota against Reilly Tar entitled State of

Minnesota, by the Minnesota Pollution Control Agency, and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar & Chemical Corporation, Defendant. St. Louis Park deposition Exhibit 15 is a true, authentic and genuine copy of the Summons and Complaint in the 1970 litigation dated October 2, 1970.

RESPONSE: Reilly admits this request.

Request No. 6. In the 1970 litigation, the State and the City sought relief against Reilly Tar for violations of State and City regulations caused by Reilly Tar's air emissions and effluent discharges. The complaint did not request that Reilly Tar be ordered to remove phenols or other contaminants from the City's drinking water supply.

RESPONSE: Deny. The complaint alleged that Reilly was polluting the waters of the State which, by statute, include groundwater, and sought injunctive relief, plus "such additional relief as the Court may deem appropriate." In addition, at all of the meetings and in all of the correspondence which led up to the lawsuit, Reilly was accused of contaminating the soil and groundwater.

Request No. 7. When the complaint was filed in the 1970 litigation, Reilly Tar had no knowledge that a potential threat to public health could exist from contamination of the City's water supply by Reilly Tar's operations. State deposition Exhibit 93 is a true, authentic and genuine copy of the handwritten notes of a Reilly Tar employee, dated July 27, 1970.

RESPONSE: Reilly admits the last sentence of this request. Reilly objects to the request on the ground that the words "Reilly had no knowledge" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving this objection, Reilly admits that some persons within the scientific community held the view in 1970 and prior thereto, and some hold the view today that there is a



correlation between exposure to some constituents of coal and coal tar and adverse consequences to health. Reilly denies the remaining allegations of this request.

Request No. 8. When the complaint was filed in the 1970 litigation, Reilly Tar believed that any contamination of the ground of its property by the raw or finished products of its operations would be remedied in the course of redeveloping the property.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge.

Request No. 9. After the complaint was filed in the 1970 litigation, Reilly Tar advised the City that any contamination of the ground of its property by the raw or finished products of its operations would be remedied in the course of redeveloping the property.

RESPONSE: After reasonable inquiry, the information known or readily obtainable by Reilly is insufficient to enable Reilly to admit or deny this request.

Request No. 10. When the complaint was filed in the 1970 litigation, Reilly Tar believed that any contamination of the ground of its property by the raw or finished products of its operations would be remedied by natural forces over a period of time. St. Louis Park deposition Exhibit 10 is a true, authentic and genuine copy of a memorandum of Mr. H. L. Finch to Mr. T. J. Ryan, dated December 3, 1970.

RESPONSE: Reilly admits the last sentence of this request. Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge.

Request No. 11. After the complaint was filed in the 1970 litigation, Reilly Tar advised the City and the State that any contamination of the ground of Reilly Tar's property resulting from Reilly Tar's operations would be remedied by natural forces. St. Louis Park deposition Exhibit 11 is a true, authentic and genuine copy of a memorandum of Mr. H. L. Finch to Mr. T. J. Ryan, dated December 14, 1970.

RESPONSE: Reilly admits the last sentence of this request but objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 11 and further objects that said exhibit speaks for itself.

Request No. 12. Prior to March 22, 1971, Reilly Tar made a business decision to close its operations. This decision was made without consultation with or prior notice to the City or the State. St. Louis Park deposition Exhibit 45 is a true, authentic and genuine copy of a memorandum of C. F. Leshner to Refinery Plant Managers, dated March 22, 1971.

RESPONSE: Reilly admits the last sentence of this request but objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 45 and further objects that said exhibit speaks for itself.

Request No. 13. Reilly Tar understood that cessation of its plant air emissions and plant effluents, resulting from the closing of its operations, would resolve the claims asserted against it in the 1970 litigation.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar understood" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving its objection, Reilly denies this

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request. The negotiations, meetings and communications which led up to the 1970 litigation specifically dealt with the question of financial responsibility to correct soil and groundwater contamination, and none of those questions were expected to be resolved by the closing of Reilly's operations.

Request No. 14. On approximately July 23, 1971, Thomas Reiersgord, counsel for Reilly Tar, advised the City and the State that the issues in the 1970 litigation, except for Reilly Tar's counterclaim against the City, were moot due to the closing of Reilly Tar's operations. Reilly Tar deposition Exhibit 15 is a true, authentic and genuine copy of a letter of Thomas E. Reiersgord, counsel for Reilly Tar, to the State, dated July 23, 1971.

RESPONSE: Reilly admits the last sentence of this request, but objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 15 and further objects that said exhibit speaks for itself.

Request No. 15. As of the date of its decision to close its operations, Reilly Tar believed that there was no phenolic contamination of the City's drinking water supply resulting from its operations.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge.

Request No. 16. As of the date of its decision to close its operations, Reilly Tar believed that there was no carcinogenic contamination of the City's drinking water supply resulting from its operations.

**RESPONSE:** Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge.

**Request No. 17.** As of the date of its decision to close its operations, Reilly Tar believed that there was no contamination of the City's drinking water supply by non-phenolic or non-carcinogenic substances resulting from its operations.

**RESPONSE:** Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge.

**Request No. 18.** Reilly Tar initially offered to sell its property to the City for a total sale price of \$2,400,000.00. Reilly Tar deposition Exhibit 61 is a true, authentic and genuine copy of Reilly Tar's "Terms of Real Estate Offer".

**RESPONSE:** Reilly admits this request.

**Request No. 19.** On or about July 30, 1971, the City offered to purchase Reilly Tar's property for a total purchase price of \$700,000.00. St. Louis Park deposition Exhibit 33 is a true, authentic and genuine copy of the City's "Offer to Purchase" dated July 30, 1971.

**RESPONSE :** Reilly admits this request.

**Request No. 20.** On or about January 20, 1972, Reilly Tar offered to sell its property to the City for a total sale price of \$2,000,000.00. Exhibit A, attached hereto, is a true, authentic and genuine copy of a letter of Thomas E. Reiersgord to Chris Cherches dated January 20, 1972 and "Purchase Agreement" dated January, 1972.

**RESPONSE:** Reilly admits this request, except that ~~Reilly's offer was to sell all but four acres of its property.~~

Request No. 21. On or about March 29, 1972, the City offered to purchase Reilly Tar's property for a total purchase price of \$1,800,000.00. Reilly Tar deposition Exhibit 91 is a true, authentic and genuine copy of a letter of Wayne G. Popham to Thomas E. Reiersgord, dated March 29, 1972' and "Offer to Purchase" dated March 29, 1972.

RESPONSE: Reilly admits this request.

Request No. 22. On April 14, 1972, Reilly Tar and the City entered into an "Agreement for Purchase for Real Estate" ("Purchase Agreement"), whereby the City agreed to purchase Reilly Tar's property for a total purchase price of \$1,900,000.00. St. Louis Park deposition Exhibit 37 is a true, authentic and genuine copy of the Purchase Agreement.

RESPONSE: Reilly admits this request.

Request No. 23. A report prepared for Reilly Tar by Mr. R. J. Hennessy on or about July 9, 1970, valued Reilly Tar's property at \$1,554,600.00 to \$1,654,400.00. St. Louis Park deposition Exhibit 49 is a true, authentic and genuine copy of a memorandum of Mr. Hennessy to Mr. P. C. Reilly, dated July 9, 1970, in which he informed Mr. P. C. Reilly of the value of Reilly Tar's property.

RESPONSE: Reilly admits that St. Louis Park deposition Exhibit 49 is a true, authentic and genuine copy of a memorandum of R. J. Hennessy to P. C. Reilly dated July 9, 1970, but objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 49 and further objects that said exhibit speaks for itself.

Request No. 24. A Summary of the Comparable Land Sales prepared for Reilly Tar valued Reilly Tar's property at \$541,344.00. St. Louis Park deposition Exhibit 21 is a true, authentic and genuine copy of the Summary of the Comparable Land Sales.

RESPONSE: Reilly admits that St. Louis Park Exhibit 21 is a true, genuine and authentic copy of a document found in

Reilly's files and produced by it in discovery in this lawsuit, but denies the remainder of the request and objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 21 and further objects that said exhibit speaks for itself. Reilly further objects to the admission of St. Louis Park deposition Exhibit 21 in evidence without calling its author as a witness or without further elaboration concerning the date that it was prepared, the purpose for which it was prepared, and an identification of its author. Reilly further objects on the ground of relevance.

Request No. 25. An appraisal prepared on or about July 29, 1971 by Shenehon-Goodlund-Johnson, Inc. for Reilly Tar determined that the market value of Reilly Tar's property was \$1,025,000.00. St. Louis Park deposition Exhibit 20 is a true, authentic and genuine copy of the July 29, 1971 Shenehon-Goodlund-Johnson, Inc. appraisal.

RESPONSE: Reilly admits that St. Louis Park Exhibit 20 is a true, genuine and authentic copy of a document found in Reilly's files and produced by it in discovery in this lawsuit, but denies the remainder of the request and objects to this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 20 and further objects that said exhibit speaks for itself. Reilly further objects to the admission in evidence of St. Louis Park deposition Exhibit 20 without calling its author as a witness. Reilly further objects on the ground of relevance.

Request No. 26. Reilly Tar received more money from the City for its property than the appraised values of its property established by the three appraisals referenced in admissions 23 to 25. Reilly Tar's appraisers did not discount the value of Reilly Tar's property for any removal of phenols from the City's groundwater or for any site clean-up beyond that required by the Purchase Agreement.

RESPONSE: Reilly denies that the three appraisals referred to establish the value of its property. After reasonable inquiry, the information known or readily obtainable by Reilly is insufficient to enable it to admit or deny the last sentence of this request.

Request No. 27. Until immediately prior to June 19, 1973, Reilly Tar had understood that the State would dismiss the 1970 litigation at the closing for the City's purchase of Reilly Tar's property. Reilly Tar deposition Exhibit 109 is a true, authentic and genuine copy of a letter of Thomas E. Reiersgord to Wayne Popham, dated July 28, 1976.

RESPONSE: Reilly admits the last sentence of this request. Reilly objects to this request on the ground that the words "Reilly Tar had understood" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving its objection, Reilly admits that Thomas E. Reiersgord, Thomas J. Ryan, P. C. Reilly, and other Reilly officers who were aware of the negotiations for the sale expected that the 1970 litigation would be dismissed at the closing of the sale.

Request No. 28. As of June 19, 1973, when the closing was scheduled for the City's purchase of Reilly Tar's property, the State was not ready to deliver a dismissal of the 1970 litigation against Reilly Tar.

RESPONSE: Reilly denies this request if it implies that the State was unwilling to release Reilly. Reilly specifically asserts that the State did intend to release Reilly and accepted a novation in which St. Louis Park became the responsible party. Reilly admits that the State then refused to dismiss that litigation against St. Louis Park.

Request No. 29. On June 19, 1973, the City and Reilly Tar desired to close the sale and purchase of Reilly Tar's property in the manner contemplated in the Purchase Agreement.

RESPONSE: Reilly admits that on June 19, 1973 it desired to close the sale and purchase and that it was led to believe that the City also desired to close the transaction.

Request No. 30. But for the lack of a State dismissal of the 1970 litigation at the closing of Reilly Tar's property, there would have been no Hold Harmless Agreement.

RESPONSE: Reilly objects to this request on the ground that it is argumentative and that it does not call for an admission of a statement or opinion of fact, or of the application of law to fact, as required by Fed. R. Civ. P. Rule 36. Without waiving its objection, Reilly denies this request and specifically asserts that if the State had delivered a dismissal, Reilly would have been released by both plaintiffs from all the claims now being asserted in this lawsuit and that the City would have had the obligation to hold Reilly harmless, since the intent of all parties was that the City would be substituted for Reilly as the party responsible for soil and groundwater cleanup. This was the meaning and intended effect of the words "as is" in the purchase agreement



dated April 14, 1972. Since the State was a party to negotiations regarding the purchase agreement through conversations between Robert Lindall, Gary Macomber and Rolfe Worden, it also accepted the property "as is" with respect to any potential cleanup obligation of Reilly, although the State did not accept the property "as is" with respect to the cleanup obligations of St. Louis Park.

Request No. 31. At the closing on June 19, 1973, Reilly accepted the Hold Harmless Agreement from the City as a substitute for a dismissal by the State of the 1970 litigation.

RESPONSE: Reilly admits that the hold harmless agreement was executed because the State would not deliver a written dismissal with prejudice, and that the written dismissal would have had the same effect as the hold harmless agreement. See response to request No. 30.

Request No. 32. When the Hold Harmless Agreement was entered into on June 19, 1973, there was no renegotiation of the purchase price set forth in the Purchase Agreement to be paid by the City to Reilly Tar.

RESPONSE: Reilly admits this request.

Request No. 33. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, the City and the State had never claimed that Reilly Tar had contaminated the City's drinking water supply with carcinogens, carcinogenic compounds, polynuclear aromatic hydrocarbons ("PAHs"), or other non-phenolic substances that were harmful to public health.

RESPONSE: Reilly admits that the City and the State had alleged that Reilly had contaminated the City's drinking water supply with constituents of coal tar; that it was common knowledge that coal tar contains PAHs; that for many years some

members of the scientific community have alleged that some PAHs are carcinogenic; that these PAHs are not phenolics; and otherwise denies this request.

Request No. 34. When the Hold Harmless Agreement was executed on June 19, 1973, Reilly Tar believed that the raw and finished products of its operations did not contain carcinogens, carcinogenic compounds, PAHs, or other non-phenolic substances harmful to public health.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar believed" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving its objection Reilly denies this request because it is common knowledge that coal and coal tar contain PAH.

Request No. 35. When the Hold Harmless Agreement was executed on June 19, 1973, Reilly had no knowledge that the City's drinking water supply had been contaminated with carcinogens, carcinogenic compounds, PAHs, or other non-phenolic substances harmful to public health.

RESPONSE: Reilly admits that when the Hold Harmless Agreement was executed on June 19, 1973 it had no knowledge that the City's drinking water supply had been contaminated in a manner which would make the consumption of that water harmful to health. Reilly specifically asserts that as of the date of these answers that situation has not changed, and Reilly still lacks knowledge that the consumption of the City's water would be harmful to health.

Request No. 36. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, Reilly Tar had never advised the City that some or all of the raw and finished

products of its operations contained carcinogens, carcinogenic compounds, PAHs, or other non-phenolic substances harmful to public health.

RESPONSE: Reilly admits that it did not make the allegations that are set forth in this request.

Request No. 37. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, Reilly Tar had never advised the City that the City's drinking water supply had been contaminated with carcinogens, carcinogenic compounds, PAHs or other non-phenolic substances harmful to public health resulting from its operations.

RESPONSE: Reilly admits that it did not make the allegations which are set forth in this request.

Request No. 38. Before the Hold Harmless Agreement was executed on June 19, 1973, Reilly Tar knew that some compounds in coal tar or its derivatives, other than phenol, were toxic or otherwise harmful to humans and had toxic or harmful effects.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar knew" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving its objection, Reilly admits that almost anything is toxic if consumed in sufficient quantities. Reilly further states that it is unable to admit or deny this request as phrased because the matters asserted were before 1973 and are now matters of considerable scientific uncertainty. Respected members of the scientific community prior to 1973 and at present hold varying views concerning the question whether compounds in coal, coal tar, and their derivatives are harmful to humans.

Request No. 39. When the Hold Harmless Agreement was executed on June 19, 1973, Reilly Tar knew that if the public drinking water were contaminated with sufficient levels of such toxic or otherwise harmful compounds, other than phenols, the public health would be threatened.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar knew" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Without waiving its objection, Reilly admits that, by definition, a toxic substance is harmful if consumed in sufficient quantities. See response to Request No. 38.

Request No. 40. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, Reilly Tar had not advised the City that compounds in coal tar or its derivatives, other than phenols, were toxic or otherwise harmful to humans and had toxic or harmful effects.

RESPONSE: Reilly admits that it did not make the allegations contained in this request.

Request No. 41. Before the Purchase Agreement was executed on April 14, 1972 and the Hold Harmless Agreement was executed on June 19, 1973, Reilly Tar knew that there were tarry materials in the Republic Deep Well. Reilly Tar had experienced problems with the Republic Deep Well of bringing balls of a tar substance to the surface which had a tendency to stick up the pump on the Republic Deep Well from time to time. State deposition Exhibit 19 is a true, authentic and genuine copy of a memorandum of Mr. H. L. Finch to Dr. W. R. Wheeler, dated March 2, 1970.

RESPONSE: Reilly objects to this request on the ground that the words "Reilly Tar knew" are vague and ambiguous in that Reilly had many officers and employees over the years, each of whom had varying degrees of information and knowledge. Reilly admits the last sentence of this request but objects to

the remainder of this request to the extent that it attempts to re-phrase and characterize a portion of the contents of St. Louis Park deposition Exhibit 19 and further objects that said exhibit speaks for itself.

Request No. 42. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, Reilly Tar had not advised the City that there were tarry materials in the Republic Deep Well.

RESPONSE: At this time, pending completion of discovery, Reilly has no evidence that, as of June 19, 1973, the City was advised that there were tarry materials in the Republic Deep Well.

Request No. 43. When the Purchase Agreement and the Hold Harmless Agreement were executed, Reilly Tar knew that the deep well went down 906 feet to the deep aquifer from which the City wells drew the City's drinking water.

RESPONSE: Reilly denies this request.

Request No. 44. As of the date that the Hold Harmless Agreement was executed, June 19, 1973, Reilly Tar had not advised the City that there was cause to test the City's drinking water for contamination by non-phenolic compounds that were toxic or otherwise harmful to humans.

RESPONSE: Reilly admits that it did not suggest to the City in 1973 that its wells be tested for compounds that were harmful to health. Reilly cannot admit or deny this request as phrased because it implies that there was cause in 1973 to make such tests.

Request No. 45. During the months June through December, 1982, cleaning of the Republic Deep Well revealed that a plug of coal tar and/or its derivatives in the Republic Deep Well began at the approximate depth interval of 595 feet and extended down to 740 feet. The coal tar and/or its derivatives found at the approximate depth interval of 595 feet

to 617 feet were hard or very hard. The coal tar and or its derivatives found at the approximate depth interval of 617 feet to 664 feet were mixed with sand. The coal tar and/or its derivatives found at the approximate depth interval of 664 feet to 695 feet were soft and dark brown or black. The coal tar and/or its derivatives found at the approximate depth interval of 695 feet to 740 feet were mixed with sand or shale. The total volume of tarry material found in the well was approximately 800 gallons.

RESPONSE: Reilly admits and alleges that the materials found in the Reilly deep well in the summer of 1982 were as described in Reilly deposition Exhibit 163, but denies the remainder of this request.

Request No. 46. The coal tar and/or its derivatives in the Republic Deep Well are a contributing source of carcinogenic contamination of the City's drinking water supply.

RESPONSE: Reilly objects to this request on the ground that the words "carcinogenic contamination" are vague and ambiguous and are not defined in the request. Without waiving its objection, Reilly denies that carcinogenic contamination exists in the City's drinking water supply, and therefore it cannot admit or deny the remainder of the request.

Interrogatory No. 1. For each admission that is qualified or denied,

- a. Fully state the factual basis for the qualification or denial;
- b. Identify the person(s) with first-hand knowledge of the factual basis for the qualification or denial;
- c. Identify all other persons with knowledge of the factual basis for the qualification or denial;
- d. Identify all documents that support the qualification or denial.

ANSWER: Reilly objects to the interrogatory appended to the City's Request for Admissions on the ground that it is

overbroad; that in asking for the factual basis for the qualification or denial, and for the identity of persons and documents that support the qualification or denial, it seeks to probe the mental impressions, conclusions and interpretations given to facts, documents and events by counsel for Reilly.

Dated: July 14, 1983.

AS TO OBJECTIONS:

DORSEY & WHITNEY

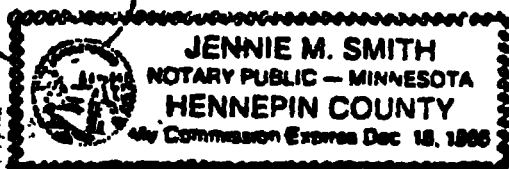
By Edward J. Schwartzbauer (MJD)  
Edward J. Schwartzbauer  
Becky A. Comstock  
Michael J. Wahoske  
2200 First Bank Place East  
Minneapolis, Minnesota 55402

STATE OF MINNESOTA )  
COUNTY OF HENNEPIN ) SS:

Robert J. Lack being first duly sworn, states that he is the Vice President of Reilly Tar & Chemical Corporation, and that he makes the foregoing responses to request for admissions on behalf of said corporation.

[Signature]

Subscribed and sworn to before me  
this 14<sup>th</sup> day of July, 1983.







**GROUND-WATER INVESTIGATION PROGRAM**

**AT**

**ST. LOUIS PARK, MINNESOTA**

**PROGRESS REPORT I**

**SEPTEMBER 1969**

**EUGENE A. HICKOK & ASSOCIATES  
HYDROLOGISTS - ENGINEERS  
MINNEAPOLIS, MINNESOTA**

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## INTRODUCTION

An investigation was undertaken during September 1969 to determine the extent of phenolic compounds in the major aquifers in the vicinity of the Republic Creosoting Company plant located at 7200 Walker Street, St. Louis Park, Minnesota. See Figure 1, Location Map.

In conjunction with this study seven borings were made to obtain soil samples for analysis of phenolic compounds in the unsaturated soil zone and to determine the extent of migration of the compounds in the shallow sand and gravel deposits in the area. The analysis of water and soil samples made during the study are included in the report, as well as a tabulation of water analyses of selected deep wells for the years 1946 - 1968.

In 1932 complaints were made to the Village of St. Louis Park that a municipal well contained water with a tarry taste. This well (No. 8A) was subsequently abandoned. At the same time a group of shallow private wells were also abandoned due to taste and odor problems.

During 1936 the McCarthy Well Company investigated reports of ground-water contamination, and concluded that they had not found any source of material that could be responsible for these tastes other than wastes discharged from the Republic Creosoting Company.

Recently the City of St. Louis Park has been confronted with problems due to the surface existence of creosote. It is believed by the utility personnel that the creosote has an adverse affect on buried water mains. In addition, there have been reports of

city personnel who have had severe skin reactions due to  
handling creosote bearing soil during utility line construction.

## GROUND WATER QUALITY

Phenol is a colorless substance which is highly soluble in water. It poses a potential health hazard. The U.S. Public Health Service has set an upper limit of concentration of 0.001 ppm for drinking water (Anon., "Drinking Water Standards," Title 42 - Public Health; Chapter 1 - Public Health Service, Department of Health, Education and Welfare, Part 72 - Interstate Quarantine Federal Register 2152 (Mar. 6, 1962).)

During the recent survey water samples were collected from 14 city wells and selected commercial wells in the area. Two locations on Minnehaha Creek were sampled and one sample was obtained from a ditch originating on the property of Republic Creosoting Company. Samples were analyzed in the laboratories of E.A. Hickok & Associates. See Table 1, Tabulation of Water Analysis, Sept. 1969.

For comparison purposes the results of available chemical analysis of well water from 1946 to 1968 have been tabulated. See Table 2.

The general direction of flow of ground water in the artesian aquifers in the area of St. Louis Park is toward the East. Superimposed on the artesian water surface are cones of depression caused by pumping from both municipal and industrial wells.

When water is withdrawn from a well, the water level in the ground-water reservoir is drawn down in the vicinity of the well forming a cone of depression in the ground-water surface. The drawdown is greatest at the well and diminishes as the

distance from the well increases. As a result, the pumping causes ground water to move radially through the underground reservoir toward the well. With continuous pumping, the cone of depression is steadily enlarged until the reservoir is exhausted or until the cone of depression reaches a source of recharge large enough to sustain the yield of the well and thus stop further water level declines.

The rate of growth and lateral extent of the cone of depression are independent of the rate of pumping. However, the rate of pumping causes a proportional variation in the depth of the cone of depression. Twice the pumping rate would produce a cone of depression twice as deep at any point.

The gradient of the upper flow systems is modified where liquid wastes are discharged onto the surface. This downward percolating liquid creates a ground-water high or mound from which the water moves away in all directions. The discharge of liquid wastes as at the Republic Creosoting plant would be expected to cause such a condition.

WATER ANALYSIS OF  
ST. LOUIS PARK, MINNESOTA  
September, 1969

<u>Well No.</u>	<u>Geologic Formation</u>	<u>Phenols in ppm</u>
1	St. Peter	0.014
2	St. Peter	0.008
3	St. Peter	0.012
4	Jordan	0.014
5	Jordan	0.014
6	Jordan	0.023
7	Jordan	0.013
8	Jordan	0.018
8A	Jordan	0.012
9	Jordan	0.013
10	Jordan	0.014
11	Hinckley	Trace
12 (Before iron treatment)	Hinckley	0.018
12 (After iron treatment)	Hinckley	0.018
13 (Before iron treatment)	Hinckley	0.018
13 (After iron treatment)	Hinckley	0.018
14	Jordan	0.009
19	-----	0.028
23	St. Peter	0.023
33	-----	0.02
Mhaha. Cr. Sample #1		0.02
Mhaha. Cr. Sample #2		0.021
Drainage Ditch (7200 Walker St.)		Excess of 2.0 ppm

Analysis by E.A. Hickok & Associates

TABLE 1A

WELL INDEX  
ST. LOUIS PARK, MINNESOTA  
SEPTEMBER 1969

Well. No.	Owner	Location	Well Log Avail.	Static Water Level	Pumping Water Level
1	City Well	NON-RESPONSIVE	X	56'	61'11"
2	City Well		X	56'	62'
3	City Well		X	54'4"	100'
4	City Well		X	---	----
5	City Well		X	119'9"	128'10"
6	City Well		X	123'8"	155'
7	City Well		X	91'11"	118'8"
8	City Well		X	149'7"	----
9	City Well		X	91'	117'9"
10	City Well		X	---	----
11	City Well		X	386'4"	414'
12	City Well		X	----	----
13	City Well		X	----	----
14	City Well			116'6"	129'6"
19	Flame Industries	Lake St. & Taft		----	----
23	McCourtney Plastics	27th W. of Louisiana	X	----	----
33	S-K Products	36th & Brunswick	X	----	----



TABLE 2  
WELL WATER ANALYSIS 1946-1968  
PHENOL CONCENTRATIONS - PPM  
ST. LOUIS PARK, MINNESOTA

Sample Date	WELL NUMBER								
	3	4	5	6	11	12	13	14	33
1/14/46		0.100							
9/30/46		0.115	0.02						
10/4/46									
10/16/47				0.007					
10/24/47			0.02						
4/19/48				0.015					
4/23/48				0.015					
6/23/48		.005							
6/23/48		0.010							
6/30/48		0.005							
8/5/48		0.070							
8/5/48		0.015							
8/13/48		0.070							
2/6/68									0.008
3/7/68	0.002	0.008		0.0025	0.000	0.000	0.000	0.000	

## GLACIAL DRIFT

The glacial drift consists largely of till with some sand and gravel deposits. The till is composed mainly of clay with sand, pebbles, cobbles and boulders intermixed.

Seven shallow borings were made within a 4,000 ft. radius of the Republic Creosoting plant. Depths of these wells range from 13 - 18 ft. Soil samples were obtained every 5 feet. Logs of each boring are shown in Figure 4 and 4A.

The following procedure was established to analyze the phenol content of the soil samples.

1. A representative 100 gram soil sample was obtained from each 5 ft. interval.
2. The 100 gram sample was then placed in a 1000 ml beaker and 500 ml of distilled water added. This was stirred for 15 minutes.
3. The sample was then filtered through a vacuum filter and a standard phenol test was performed on the liquid portion. Results were interpreted from a standard phenol curve.

The laboratory procedure is believed to establish the amount of phenol material that can readily be leached from the soil by percolating water. It should be noted that results of this procedure will give a somewhat lower phenol content than actually exists, as all of the phenol in the sample is not leached in a 15 minute period.

Figure 4 is a comparison of phenol concentrations with relative elevation. There is apparently no consistent relationship between phenol concentration and depth. High concentrations

o. phenols are present in most clay and silt layers although well No. 1 contains high concentrations (0.030 ppm phenol) in a coarse sand.

The phenol concentrations seem to decrease with distance from the Republic Creosoting plant. The results of samples taken from 13 ft. depths below ground surface at each soil boring have been plotted and are shown on Figure 5. Boring SL-1 located on the north edge of Republic Creosoting approximately 1,000 ft. from the source of phenols shows a phenol content of 0.030 ppm.

To make a detailed analysis of the effect of distance and depth on phenol concentration will require more intensive geologic and hydrologic information than is now available. To provide the data necessary for a more complete analysis a minimum of 10 soil borings ranging to 50 ft. in depth in addition to several additional deep test wells will be required.

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**E A HICKOK & ASSOCIATES**  
**HYDROLOGISTS - ENGINEERS**  
**MINNEAPOLIS MINNESOTA**

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E A HICKOK & ASSOCIATES  
HYDROLOGISTS-ENGINEERS  
MINNEAPOLIS MINNESOTA

### ST. PETER FORMATION

The St. Peter formation consists of a white to yellow, medium to fine-grained sandstone. It varies from 100 - 165 ft. in thickness in the St. Louis Park area and contains beds of shale in the lower part of the formation.

The highest concentrations of phenols are found in wells open to the St. Peter formation, near the Republic Creosoting plant and down gradient in the direction of the regional water level slope. Well No. 19 shows the highest phenol concentration at 0.028 ppm. This well is located approximately 1,200 ft. south of the creosoting plant property line and less than 500 ft. from the low swampy area which receives water from the company's effluent ditch. Well No. 33 located down gradient but at a greater distance has a phenol concentration of 0.020 ppm or a decrease of .008 ppm in a horizontal distance of 6,000 ft.

NON-RESPONSIVE



A possible explanation for even small amounts of phenol up-gradient lies in the fact that wells 1, 2 and 3 pump an average of approximately 2 to 3 million gallons per day (mgd). This is believed to produce a cone of depression around the wells and correspondingly a local reversal in the direction of ground water flow. This pumpage could cause movement of water from the area of the creosoting plant toward wells 1, 2, and 3.

### SHAKOPEE FORMATION

Most of the Shakopee formation is a massive, gray to buff, dolomitic limestone with cavities filled with white calcite. Some private wells are constructed in the Shakopee but the St. Louis Park municipal wells do not utilize this formation for its water supply.

## JORDAN FORMATION

The Jordan formation is a loosely cemented medium to coarse grained, white sandstone. Average thickness in the St. Louis Park area is 80 - 100 ft. The coarseness of grain and uniformity of grain size make the Jordan formation an excellent aquifer.

To some extent the horizontal migration of phenols in the Jordan resembles that in the St. Peter geologic formation. Phenol concentrations decrease with distance from the source and also up gradient. NON-RESPONSIVE

Surface water containing phenolic compounds draining from the vicinity of Highway 7 toward Minnehaha Creek could have caused a source of phenols to be located near well No. 6. Therefore, subsurface travel time has been decreased and the phenol concentrations observed are higher than would otherwise be anticipated.

The general pattern of vertical and horizontal migration of phenol compounds is complicated by the existence of numerous fissures and solution cavities in the Shakopee formation overlying the Jordan Sandstone. Numerous wells which penetrate the geologic formations above the Jordan, including the Shakopee formation, if improperly constructed could serve as conduits for vertical migration of phenols.

Evidence of contamination at depth is shown in the area near 29th Street and Idaho Avenue. In this area the results indicate that the St. Peter and Jordan formations contain concentrations of phenols in near equal amounts.



HINCKLEY FORMATION

The Hinckley formation is a coarse to fine, yellowish to pink sandstone. Average thickness in the St. Louis Park area is 120 ft.

NON-RESPONSIVE



It is recommended that further investigations be made to determine the source of these phenols.

## CONCLUSIONS

1. The chemical process wastes such as those discharged by the Republic Creosoting Company contain phenols.
2. Phenolic compounds have penetrated to the glacial drift, St. Peter, Shakopee and Jordan geologic formations in the vicinity of St. Louis Park.
3. The city wells sampled have phenol concentrations above the upper limits set by the U.S. Public Health Service. Ground water contaminated by phenolic compounds is objectionable and potentially a health hazard. Concentrations of phenol in excess of 0.001 mg/l can be undesirable to the taste and may be harmful to health. (Anon., "Drinking Water Standards," Title 42 - Public Health; Chapt. 1 - Public Health Service, Department of Health, Education and Welfare, Part 72 - Interstate Quarantine Federal Register 2152 (March 6, 1962).

NON-RESPONSIVE

5. The glacial drift is primarily utilized for domestic wells in the St. Louis Park area. The majority of the shallow private wells in the glacial drift in the vicinity of the creosote plant have been abandoned.
6. The St. Peter, Jordan and Hinckley formations are the principal aquifers for St. Louis Park municipal and commercial wells.
7. The observed movement of ground water in the vicinity of St. Louis Park is in the same easterly direction as regional ground-water movement. In some areas the movement is controlled by local pumping wells.

8. The biodegradation of phenols under anaerobic conditions is not fully understood. Research of public documents to date has not proven helpful in providing an evaluation of analysis techniques or in estimation of the biodegradation features of phenolic compounds.
9. The ground-water control program initiated should be considered one of continuing investigation. Geologic and hydrologic subsurface information is lacking in many locations in St. Louis Park. This information is needed to document travel of ground-water contaminants.

## RECOMMENDATIONS

1. The further disposal of untreated phenolic liquid waste should be prohibited.
2. A comprehensive investigative program to more exactly delineate the extent of ground-water contamination and to prevent further migration of phenolic compounds in the aquifers of the area should be initiated.
3. The following studies should start immediately.
  - (a) Water quality sampling should be conducted on a regular basis.
    1. Selected wells should be sampled on a monthly basis to determine if there are seasonal changes in water quality or phenol content.
    2. Water levels should be recorded on a monthly basis from all aquifers.
    3. Stream and storm sewer monitoring at selected sites should be initiated to determine if phenol waste from Republic Creosoting is entering the surface waters of the area.
4. Shallow soil borings which penetrate the static water level of the upper flow systems should be constructed.
  - (a) Soil samples should be taken and analyzed to determine phenol content.
5. Observation wells which would penetrate to the Jordan formation should be drilled to provide better control where subsurface information is lacking.
  - (a) See Appendix A for construction details
  - (b) ~~These wells should be monitored as described above~~

6. A quantitative pumping test should be conducted in the immediate vicinity of the Republic Creosoting Company plant to determine aquifer characteristics of the glacial drift material.
7. A program of removal of water containing high phenol concentrations in the glacial drift immediately surrounding the Republic Creosoting plant should be initiated. The program should be based upon the results of the test outlined in No. 6 above.
8. An investigation should be made of all possible means of removal and disposal of the shallow, heavily saturated soils in the vicinity of the creosote plant. The best program should be selected and implemented at the earliest possible date.
9. Based on the data obtained from deep drilling a specific program to either remove the contaminated ground water from these aquifers or to control its further migration should be implemented.
10. Using pump test data construct removal wells (5) to pump contaminated water out of the ground within the area of highest concentration before it has an opportunity to migrate.

Respectfully submitted,

EUGENE A. HICKOK & ASSOCIATES

E.A. Hickok, P.E.

September 26, 1969

EAH:rc

EUGENE A. HICKOK & ASSOCIATES

HYDROLOGISTS - ENGINEERS

1415 WAYZATA BOULEVARD  
WAYZATA, MINNESOTA 55391

473-4224  
(AREA CODE 612)

October 18, 1969

Mr. Chris Cherches, City Manager  
City of St. Louis Park  
5005 Minnetonka Blvd.  
St. Louis Park, Minnesota 55416

Dear Mr. Cherches:

Enclosed is a copy of our Progress Report No. 1 concerning the ground-water investigation program at St. Louis Park. The report includes our conclusions and recommendations for further investigation regarding the source and extent of phenol contamination of the ground water in St. Louis Park.

A concerted effort has been made to obtain outside check analyses for the phenol content of the water. Samples were submitted to the Minnesota State Health Department for analysis. The Health Department has communicated to us verbally that they are unable to make such analyses.

In the event St. Louis Park decides to carry the project further I would recommend that we be authorized to obtain and submit samples for analysis to a competent outside agency in order to verify the phenol concentrations.

I have enclosed a memorandum regarding the research which we have done on the nuisance and potential health hazard associated with phenols in ground water. The recommended maximum phenol concentrations are less than the concentrations in the city wells.

I wish to thank you and your staff for their assistance during the course of this investigation and would be pleased to discuss this report with you at your convenience.

Sincerely,

EUGENE A. HICKOK & ASSOCIATES



E.A. Hickok, P.E.

EAH:rc



*City of St. Louis*

*SLP DE 7*

November 3, 1969

*follow up Hickok report - no  
health problems  
11-12-69*

Mr. Herb Finch, Manager  
Republic Cresoting Company  
7200 Walker  
St. Louis Park, Minnesota

*Then go to 4-70 P.C.A. report.*

Dear Herb:

This will confirm our Tuesday, October 28, 1969 meeting which included Mr. Justin, your chief chemist, and Mr. Harvey McPhee, City Sanitarian, regarding the Cresote plants operation and the preliminary water samples taken of our well supply. At this meeting, I attempted to explain as factually as possible the seemingly critical situation which exists and the action required. I have since received additional information which even emphasizes more vividly my request that immediate action be taken by your firm to prevent and eliminate the contamination of the City's water system and ground penetration.

As you will recall, I indicated to you that I wanted to bring this matter to your attention inasmuch as the water samples appear to exceed the public health standards for phenol concentration for drinking water. In addition, I outlined to you the real dilemma in which the City faces regarding storm sewer installations in this area because of the ground contamination of various oils, etc. which would not be permitted to discharge into the creek or into other areas. The preliminary study points out the problem quite simply and emphasizes the critical nature of the situation. While I am not prepared to verify that all of the contaminants which have been found to exist in the ground or in the City's water supply come directly from your firm, evidence points to the fact that the greatest portion does. In addition to the water pollution problem, we also have an odor and air problem which must be taken into consideration at the same time.

I am not sure what action the Council will take once they receive the preliminary report from its consultants on its ground water investigation. However, I believe that the Council would be remiss if some action was not taken to prevent and to eliminate the situation which has been found during the preliminary ground water investigative program. It would appear that the first step the Republic Cresoting Plant could take is to eliminate the seepage of any more contaminants on the ground which would

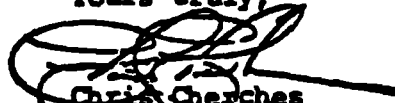
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percolate into the soil and gradually flow into the various water strata in which the City and other communities obtain their drinking water supply. Naturally, this is only one of the many problems which exists in this area and it is the responsibility of the City Council, as you know, to attempt to work out a solution to solve such a serious and potential health problem.

As I mentioned to you at our conference, it would appear to be highly desirable to have one of your chief engineers from your company to meet with our consultant to discuss this problem. Following this meeting, I believe it would then behoove and anyone from your home office who wishes to do so, to meet with our City Council and frankly discuss this situation. Time is at an essence and I would urge you to attempt to set up some meeting within the next two or three weeks with our City Council and hopefully much sooner between your technician and our consultant regarding this problem. I do not intend to make an issue of this matter publicly but as we discussed before, I am sure that you can understand that should some of the information in which we now have is released publicly, that there will be serious problems arising and might necessarily force the Council into action which would not be in agreement with your firm but would be mandatory from the responsibility that a City Councilman must bear. Therefore, if possible, I would urge you to establish at the earliest possible date a meeting with someone from your engineering staff and with our water consultant to review this entire problem and program of prevention and elimination. Following such a meeting, we could then schedule an informal meeting with our City Council to review this problem in detail. Because of the critical nature of this matter, I do not believe that we should hesitate to place this on the top of the priority list and to establish a meeting in the immediate future. I shall be waiting to hear from you regarding this matter.

Yours truly,

  
Chris Cherches  
City Manager

CC:cg

*J. H. Ryan* ✓  
*R. J. Boyle*

1003312



DEPARTMENT

HEALTH

## Office Memorandum

TO : Mr. John P. Badalich, Director  
 Minnesota Pollution Control Agency  
 Attention: Mr. C. A. Johannes, Acting Director  
 Division of Water Quality

DATE: April 20, 1970

FROM : R. E. Frazier, Chief, Section of Analytical Services  
 Division of Environmental Health

SUBJECT: St. Louis Park well water analysis

We have your memorandum of April 14 on the subject of phenol in wells in St. Louis Park.

Enclosed are the analytical results for a series of samples collected from various St. Louis Park wells on April 16, 1970, by Mr. Fridgen of the Health Department and examined by the Section of Analytical Services for phenol material. In all cases phenolic material as phenol was less than 5 micrograms per liter.

Analyses were made by the chloroform extraction procedure described on page 517 of Standard Methods for the Examination of Water and Waste Water, 12th edition. This is probably the most sensitive test for phenols available.

The determination of phenol is a somewhat difficult procedure and is complicated by the fact that the phenolics are a class of compounds, any one of which may give a different response in a particular method of determination. Results are reported, however, as if pure phenol were the substance determined. On the assumption that any phenolic present in the water from the St. Louis Park wells would be from wastes discharged by Republic Creosoting Company, wastes from this company were studied to compare their response in the procedure used to that of pure phenol. Comparisons were based on ultraviolet absorption methods which are not subject to great variation for the substituted phenols. Results showed that the creosoting wastes gave about 80% of the response that would be expected of pure phenol. This indicates the method used is quite adequate to measure phenolics from the creosoting waste.

While phenolics are toxic to bacteria when present in high concentrations, in moderate-to-low concentrations they are quite biodegradable. For example, both high-rate trickling filters and activated sludge systems are in use in the petroleum industry in the treatment of phenolic wastes. Feed water can contain upward of 500 mg/l of phenolics. Standard Methods even makes provision for preventing loss of phenol during transport of the sample from bacteriological degradation. The extent to which phenols are destroyed in ground water would probably depend both on residence time in the aquifer and distance traveled to a sampling point, as well as on the nature of the aquifer itself. It is highly unlikely that phenols can persist for long periods of time in dilute solution in biologically active portions of the soil, and it is inconceivable that phenols discharged to the surface of the grounds in the St. Louis Park area could reach the Hinckley sandstone.

Probably the most objectionable feature of phenol in a water supply is the taste and odor imparted to the water. The hazards to health are small at concentrations of phenol which produce tastes which would not be tolerated. Standard Methods states that phenols above 10 parts per billion can be detected by taste and odor, and amounts

Mr. John P. Badalich  
Attn: Mr. C. A. Johannes

-2-

April 20, 1970

approaching one part per billion can be objectionable after chlorination. It seems pertinent that no unusual complaints about tastes and odors have been received from users of the St. Louis Park water supply.

While we do not believe that there is good evidence at the present time to substantiate a claim that the Park municipal wells are contaminated, it seems obvious that the disposal of a substantial quantity of phenolic material on the surface of the ground in a general area where there are wells producing water for human consumption is not desirable and constitutes a serious hazard. The economic consequences of significant contamination would be tremendous; and the potential threat should be removed as soon as possible.

It would seem advisable to arrange a meeting with all the people concerned and explore the problem more thoroughly.

REF:pjb

Enclosures

40030741

7-70

**Samples Collected By****Report To**[illegible]

Results are in milligrams per liter except as noted.

4-17-70

**Samples Collected By****Report To**

22

This line for Lab. use only.	2115 <sup>a</sup>	2116 <sup>b</sup>	2117 <sup>c</sup>	2118 <sup>d</sup>		
Sample Number						
Date Collected	4-16-70					
Time Collected						
Temperature °F						
Date Received by Lab.	4-16-70					
Coliform group	M.P.N. per 100 ml.					
	Con. <input type="checkbox"/> Comp. <input type="checkbox"/>					
organisms	M.F.C. per 100 ml.					
Total Solids						
Turbidity						
Color						
Total hardness as CaCO <sub>3</sub>						
Alkalinity as CaCO <sub>3</sub>						
pH value						
Iron						
Manganese						
Chloride						
Residual Chlorine						
Sulphate						
Fluoride						
Total Phosphorus						
Nitrite Nitrogen						
Nitrate Nitrogen						
Methylene Blue Active Sub. as ABS						
Calcium as CaCO <sub>3</sub>						
Sodium						
Potassium						
Spec. Cond. µmhos/cm @ 25 °C.						
pHs @ 50 °F.						
	✓ 6.005	6.005	6.005	6.005		

~~40030743~~

\* Results are in milligrams per liter except as noted.



## INTER-OFFICE CORRESPONDENCE

## REILLY TAR &amp; CHEMICAL CORPORATION

TO: Mr. H. L. Finch

OFFICE: St. Louis Park

FROM: Mr. W. A. Justin

DATE: April 21, 1970

SUBJECT: Water Pollution

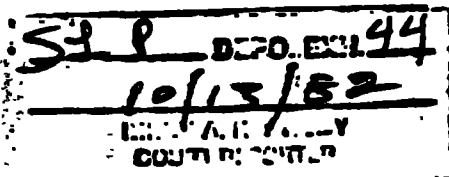
\* Refer to letter of April 20, 1970.

On April 21, 1970, I received a telephone call from Mr. George Koonce, of the Minnesota Pollution Control Agency, requesting the same information I had given to Mr. Lutz, who had inspected our plant on April 20, 1970\*. Mr. Koonce was aware that Mr. Lutz had been in the plant, and he expected to receive his report, however he did not come to work on the 21st, so he called me to obtain information. This would indicate a pressing need for information about our plant. This sudden concern, I believe is a result of St. Louis Park pressing the state to investigate us. Mr. Koonce brought out the same points of concern that Mr. Lutz had, namely a report from St. Louis Park of us dripping creosote oil all over the place and underground storage leaking and polluting the ground water. I again told him as I had Mr. Lutz, that this was simply not true. Mr. Koonce asked me if we were planning to sub-cut our soil as St. Louis Park had requested, and I told him I was not aware of such a request. St. Louis Park has apparently told him our soil is reeking with tar and oil, which is constantly polluting the underground water. I did find out from him that the state had run tests on some of St. Louis Park's wells, which ones he did not know, and found the phenol content to be 5 parts/million, which he said was well below concerned concentrations. Mr. Koonce requested we send him plans we had for pollution control. He said the ones we had sent to St. Louis Park would be satisfactory, and that any equipment we planned to install would have to be submitted to the state for approval and licensing. One side note of interest came up in the course of the conversation, when Mr. Koonce said that the state health department was unhappy about the general appearance of our plant, but this was of no interest to him since it was out of his department. I wonder if the fact that Mr. McPhee is with the St. Louis Park health department has any connection with this?

My overall impression in talking with Mr. Koonce and Mr. Lutz, is that St. Louis Park has given the state ambiguous reports of the conditions within our plant, in an effort to have the state enter the picture. After talking with these men, I feel that they now agree that our main problem with water, is not from our plant runoff, but from the fact that water is allowed to run into and out of our area, and also that they do not feel the present analysis they have on the underground water is proof enough that we are polluting it.

Very truly yours,

W. A. Justin



NAJ:318

cc: C. F. Leshner

302465







STATE OF MINNESOTA

DEPARTMENT OF HEALTH

UNIVERSITY CAMPUS

MINNEAPOLIS 55440

August 24, 1970

Mr. Harvey McPhee, Sanitarian  
St. Louis Park, Health Department  
St. Louis Park, Minnesota

Dear Mr. McPhee:

In accordance with the suggestions made at our conference last week, I called Dr. Robert A. Baker at the Mellon Institute. Dr. Baker and I are both of the opinion that, for the determination of phenols, the 4-Aminoantipyrine method is, generally, considerably more sensitive than gas chromatography.

Even with freeze concentration, which under ideal conditions can concentrate the sample by about 100 fold, the gas chromatography method falls somewhat short of the part per billion range required. The exception to this general observation occurs in situations where the phenolic compound under examination is substituted in such a way that it is not measured with good sensitivity by 4-Aminoantipyrine.

Gas chromatography has about equal sensitivity for all phenolic compounds. If the phenolic materials from Republic Creosote were such that they were not detected by 4-Aminoantipyrine, then gas chromatography techniques might detect them, but probably not in the low part per billion range.

In view of the fact that your laboratory appeared to detect these phenols by the colorimetric method, Dr. Baker suggested, and I concur, that a first step might be to have the Rice laboratories examine water samples by the 4-Aminoantipyrine method, using very carefully collected and treated samples. At the same time, a more concentrated sample of the waste itself could be examined by chromatograph to determine the extent to which compounds not detectable colorimetrically were present. With the information thus obtained, the necessity for and nature of further studies could be determined.

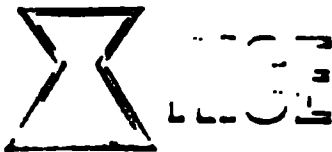
We feel that this approach should produce results acceptable to us.

Yours very truly,

R. E. Frazier, Chief  
Section of Analytical Services

REF: mm





MANOR OAK TWC  
1910 COCHRAN ROAD  
PITTSBURGH, PA 15220  
412-343-9200

November 5, 1970

Client No. 6157.01

Mr. Harvey J. McPhee  
Public Health Sanitarian  
City of St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, Minnesota 55416

Dear Mr. McPhee:

We have completed the chemical (4-aminoantipyrine) and freeze concentration--gas chromatographic (GLC) analyses of the well waters and Republic Creosote Company effluent water collected Wednesday, October 21, 1970. Partial results were sent to you in a letter addressed to Mr. Cherches. Dr. Baker of Mellon Institute has sent me the results of his analyses, a copy of which is attached.

Except for the effluent sample, Dr. Baker was unable to find any phenols or phenolic compounds in any of the waters. A comparison of the typical chromatograms shown in Figures 1 and 2 demonstrates this point quite clearly. Figure 2 is a chromatogram of the water from the Flame Industries well. Analysis of this sample in the RICE laboratory revealed the presence of 0.001 mg/l of phenol. Table 1 lists the location, odor, phenol concentration and the area of the rapidly eluting peak presumably due to sulfur containing compounds. (A sulfide odor was noted during collection of many of the well waters.) Dr. Baker estimates his limit of detection as 1 to 3 µg/l (0.001 to 0.003 mg/l) for organic materials, although recovery at this level may be influenced by the total dissolved salt content of the waters during concentration.

From the above information, we can conclude that:

1. Phenolic compounds were detected in the Republic Creosote effluent water both by GLC and the 4-aminoantipyrine method (4-AA).
2. The well at Flame Industries yielded a phenol value of 0.001 mg/l by 4-AA; phenol was not detected in this water by GLC.

40090055

Mr. Harvey J. McPhee  
City of St. Louis Park  
November 5, 1970 - Page 2

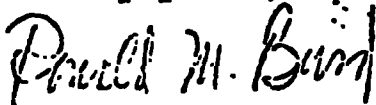
3

Since phenols were not found in any of the well waters in sufficient quantity by GLC, it is impossible to determine if any of the compounds found in the effluent water are in fact present in the surrounding wells. (The 4-AA method does not identify specific phenolics, whereas GLC is capable of determining specific compounds by their elution or emergence time.)

Regarding sample handling and preservation, we believe that all due care was accorded the samples in collection, handling, preservation and analysis. The samples for Dr. Baker's work were received in Pittsburgh, October 23, 1970, in excellent (frozen) condition. The samples for work in the RICE laboratory were preserved with copper sulfate and phosphoric acid, hand carried to the airport, refrigerated in Pittsburgh overnight and were immediately analyzed (before noon) in the RICE laboratory Thursday, October 22. Thus, we believe that only limited biological activity could have caused degradation of the phenolic compounds if present.

Thank you for the opportunity to be of service.

Sincerely yours,



Ronald M. Burd  
Senior Technical Associate

RYB:jdc



1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 FOURTH DIVISION

4 -----  
5 United States of America,  
6 Plaintiff,  
7 and  
8 State of Minnesota, by its  
9 Attorney General Warren Spannaus,  
10 its Department of Health, and  
11 its Pollution Control Agency,  
12 Plaintiff-Intervenor,  
13 vs.

14 Kelly Tar & Chemical Corporation;  
15 Housing and Redevelopment authority  
16 of Saint Louis Park; Oak Park  
17 Village Associates; Rustic Oaks  
18 Condominium Incorporated; and  
19 Philip's Investment Company,  
20 Defendants.

Civil No.  
4-80-469

21 and  
22 City of Saint Louis Park,  
23 Plaintiff-Intervenor,  
24 vs.  
25 Kelly Tar and Chemical Corporation,  
Defendant.

and  
City of Hopkins,  
Plaintiff-Intervenor,  
vs.  
Kelly Tar & Chemical Corporation,  
Defendant.

-----  
VOLUME IV

The Deposition of HERBERT L. FINCH, taken  
pursuant to Notice of Taking Deposition, taken before  
Kirby A. Kennedy, a Notary Public in and for the County  
of Washington, State of Minnesota, taken on the 19th  
day of August, 1982, at 4344 IDS Center, Minneapolis,  
Minnesota, commencing at approximately 8:30 a.m.

1 MR. COYNE: The second of those two  
2 wells is referred to as the sugar beet well, is it not?

3 THE WITNESS: That's probably right.

4 MR. COYNE: And that particular well was  
5 not used by by Reilly Tar in the course of it's  
6 cperations?

7 THE WITNESS: That is correct.

8 MR. COYNE: So the well that was  
9 referred to as the Reilly deep well or Well 23, is the  
10 one on the southern portion?

11 THE WITNESS: That's correct.

12 BY MR. HINDERAKER:

13 Q. And the sugar beet well was the one that  
14 wasn't used since 1917?

15 A. That, I presume, was tested and found to be  
16 in bad shape.

17 Q. The reference in the transcript is to phenols.  
18 When you talk about the wells you say that, "We have no  
19 trace of any harmful amount of phenols in these wells."

20 A. Well, phenols were the only thing that we  
21 were really discussing at that particular time.

22 Q. Was that true all the way through the time  
23 you were plant manager through 1972?

24 A. Right.

25 Q. To the extent that anyone made an allegation

(FINCH DEPOSITION)

KIRBY A. KENNEDY & ASSOCIATES  
Phone (612) 922-1955



1 MR. COYNE: The second of those two  
2 wells is referred to as the sugar beet well, is it not?

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18 When you talk about the wells you say that, "We have no  
19 trace of any harmful amount of phenols in these wells."

20 A. Well, phenols were the only thing that we  
21 were really discussing at that particular time.

22 Q. Was that true all the way through the time  
23 you were plant manager through 1972?

24 A. Right.

25 Q. To the extent that anyone made an allegation

(FINCH DEPOSITION)

1 of any harmful consequences to wells or the city water  
2 supply or to any underground waters it was always a  
3 reference to phenols and nothing else?

4 A. That's right, Allen.

5 Q. And I will have to show you quickly one of  
6 the documents that we looked at before, it was marked  
7 State Exhibit 13 A. I will give you that copy and,  
8 Herb, my question is on the second page.

9 A. Can I read on the first page then?

10 Q. Go ahead and read it to get to your context.

11 A. All right, sir.

12 Q. Okay. This is your memorandum to Mr. Boyle  
13 down in Indianapolis?

14 A. Yes, sir.

15 Q. I see on the last paragraph of the second  
16 page, I guess it's the second sentence, "Again I was  
17 faced with the story that a park well had been  
18 contaminated with creosote"?

19 A. Yes.

20 Q. And you called it a story. Why did you call  
21 it a story?

22 A. Because it had been told to me without any  
23 factual presentation.

24 Q. And is this the same story that you are  
25 referring to in Saint Louis Park Exhibit 4, the

1 transcript, when you reference back to '33 and 1940?

2 A. Yes, I would imagine it would be.

3 Q. Now, this memo that we are talking about,

4 State Exhibit 13 A is dated January 8, 1962. As of

5 that point there was no data presented to you to

6 substantiate the story. Was that true throughout your

7 time as plant manager?

8 A. I don't recall any data, Allen.

9 Q. So at least as best we can do today, no

10 recollection of any data supporting the story of '36

11 and '40, did you ever have any data supporting any

12 contamination of wells by phenols or anything

13 attributed to Reilly Tar throughout your time as plant

14 manager?

15 A. No, I don't recall any.

16 Q. Would it be accurate to say that throughout

17 your time as plant manager it was your belief, based

18 upon the facts as you knew them, that there was no

19 contamination of the underground water supplies or the

20 city wells from coal tar or creosote or any of the

21 operations at Reilly Tar?

22 A. That's right, at least they weren't

23 specifically attributable to Reilly Tar. I didn't know

24 of any, no.

25 Q. Did you receive any data of well

1 contamination or contamination of the Saint Louis Park  
2 water supply because of phenols that were alleged to be  
3 the result of --

4 A. No, I did not.

5 Q. Do you have a recall of the frequency the  
6 Reilly wells were tested to comply with Health  
7 Department standards?

8 A. No, I don't have a recall of that.

9 Q. Without regard to how many times in a  
10 particular time frame did you perform those tests  
11 throughout the time that you were plant manager?

12 A. We didn't perform the tests, we sent them out.

13 Q. Did you have those tests performed by someone  
14 else throughout the time that you were plant manager?

15 A. Yes, we did test them on several occasions as  
16 I recall.

17 Q. Looking at State Exhibit 13 A, again that  
18 last paragraph on the second page, my recollection is --  
19 well, first let me reference you to that last sentence.  
20 "Engineers, it was claimed, have stated that the only  
21 way to actually stop this contamination is to fill in  
22 the areas saturated with creosoted products, thereby,  
23 reducing the seepage into ground stratas of water thus  
24 eliminating contamination problems." My recollection is  
25 that the area referenced in that document in '62 was

1 the area north and south of Highway 7, is that your  
2 recall?

3 A. Where are we talking about here, Allen?

4 Q. That last paragraph on the second page of 13  
- 5 A?

6 A. Okay.

7 Q. State Exhibit 13 A.

8 A. I would imagine it would be all of that area,  
9 yes.

10 Q. And I think you said before that you used the  
11 phraseology it was claimed by Mr. Boyle because you did  
12 not necessarily agree with the allegation?

13 A. That is correct.

14 Q. And I think to your knowledge if there was  
15 any penetration of the soil it was a couple of inches?

16 A. Well, that was in a specific area which is on  
17 the dock area, that is correct.

18 Q. Okay. My question is whether you knew at any  
19 time while you were plant manager of penetration of  
20 creosoted coal tar into the soils deeper than two  
21 inches?

22 MR. SCHWARTZBAUER: Can you define  
23 penetration? Would that apply, for example, to a fluid  
24 area such as the swamp?

25 BY MR. HINDERAKER:

1 Q. No, I don't suppose it would. I think, as I  
2 recall, the last deposition, Herb --

3 A. I didn't do any measuring of the soil outside  
4 the plant, Dennis, so I have got to say that I am not  
5 aware of any significant penetration.

6 Q. And let me refer you to State Exhibit 25. I  
7 think these things are numbered, aren't they?

8 A. Yes, they are.

9 Q. That's another letter or another memorandum  
10 to Mr. Boyle in Indianapolis and this brings us up to  
11 October 15 of 1970 on the second page, second paragraph,  
12 you tell Mr. Boyle, "On leaving Mr. Lindahl asked if we  
13 had ever taken measurements of the penetration of our  
14 product into the soil on the other side of Walker  
15 Street. He was informed that we had no cause to take  
16 any measurements of this type as this was speculation  
17 made by the city." I believe you in fact did believe  
18 it was speculation, did you not, Mr. Finch?

19 A. Yes, sir.

20 Q. Now, with regard to that concern of  
21 penetration into the soil, I know we are talking again  
22 on this document on the other side of Walker Street,  
23 but let me talk just about the plant property. Is  
24 there any significant, in your view, significant  
25 penetration of creosoted coal tar products into the

1 plant property?

2 A. No.

3 Q. And that would be a statement for the entire  
4 period that you were plant manager?

5 A. That's right.

6 Q. And in your judgement what would be  
7 significant so we get a sense of that?

8 A. Something that you couldn't remove by removal  
9 of a few inches of earth.'

10 (At this time Saint Louis Park Reposition  
11 Exhibit 5 was marked for identification by  
12 the Court Reporter.)

13 BY MR. HINDERAKER:

14 Q. Mr. Finch, I am going to show you what has  
15 been marked as Saint Louis Park Exhibit 5, it appears  
16 to be a draft of a letter to Mr. Cnerches. My first  
17 question to you is if you recall it or if this is  
18 something that would have been prepared by you?

19 A. It looks like some of those notes are mine  
20 and some of them are not mine, Allen.

21 Q. Let me refer you to the third page, second  
22 paragraph that begins, "We take strong objection."

23 A. That's mine.

24 Q. Is the handwriting yours?

25 A. Yes, I recognize that.

1 Exhibit 7 was marked for identification by  
2 the Court Reporter.)

3 BY MR. HILDEBRAKER:

4 Q. Mr. Finch, Saint Louis Park Deposition  
5 Exhibit 7 I am going to give to you, it's dated  
6 November 3, 1969, it's addressed to you by Mr. Cnerches  
7 the City Manager on the letterhead of Saint Louis Park.

8 A. Yes, sir.

9 Q. Do you recall receiving this or would you  
10 have received this?

11 A. I would have. I noted to go to Mr. T. J.  
12 Ryan, and R. J. Royle on the second page so I have seen  
13 it.

14 Q. So that's your handwriting?

15 A. That's correct.

16 Q. Would you take a moment to review the letter,  
17 please?

18 A. All right, sir.

19 Q. The letter recounts, does it not, some of the  
20 allegations that Reilly Tar faced during the period  
21 that you were plant manager?

22 A. That is correct.

23 Q. Do you notice on the first page in the second  
24 paragraph the public health concern referenced there is  
25 phenols, is it not?



1 A. That is correct.

2 Q. Now, apart from this particular letter of Mr.  
3 Cherches, did Mr. Cherches ever raise any other health  
4 concern regarding the drinking water supply of Saint  
5 Louis Park other than phenols to you?

6 A. I don't recall any.

7 Q. And I take it that he did continue to be  
8 accurate that throughout your period of time as plant  
9 manager there was not presented to you data supporting  
10 the allegation of phenolic contamination of the City  
11 drinking water supply?

12 A. No. He mentioned that he didn't have them  
13 available here any way or something to that effect. I  
14 don't know what data he is referring to. Something  
15 came to his attention. I don't know what came to his  
16 attention. I don't think he shared that with me.

17 (At this time Saint Louis Park Deposition  
18 Exhibit 8 was marked for identification by  
19 the Court Reporter.)

20 BY MR. HINDERAKER:

21 Q. Mr. Finch, let me show you another letter, we  
22 have marked it as Saint Louis Park Deposition Exhibit 8,  
23 it's dated November 18, 1969, 15 days after Exhibit 7.  
24 It attaches a memorandum of October 18, 1969 of F. A.  
25 Hickok and Associates. Would you have received this on

1 or about its date?

2 A. That's my writing on the bottom, carbon copy  
3 to T. J. Reilly.

4 Q. Where do you see that, sir?

5 A. First page.

6 Q. I think my question will be directed to the  
7 first page of the Hickok memo and the first paragraph  
8 of that, Mr. Finch. Do you see the statement, "It is  
9 not likely that harmful concentrations of phenol will  
10 be consumed in drinking water as such concentrations  
11 are higher than taste considerations would allow"?

12 A. I have heard that before.

13 Q. Was that your understanding of the situation  
14 with regard to the consequences of phenolic  
15 contamination?

16 A. Yes.

17 Q. And was that understanding held by you  
18 throughout your time as plant manager?

19 A. Yes, I knew that oak leaves put a lot of  
20 phenols in creeks sometimes and kind of disturbed the  
21 fish.

22 Q. Because phenols is a natural byproduct or  
23 natural decay of plant life?

24 A. That is correct, yes.

25 Q. I think at one time didn't you present

1 information to the City supporting the proposition that  
2 the amount of phenols found in some swamp areas of the  
3 city were no greater than the amount of phenols in your  
4 process discharge?

5 A. I don't remember what the concentrations were  
6 but I did have the people go around and check because I  
7 did know that phenols were in swamps from the  
8 background I had.

9 Q. Would it be accurate to say that throughout  
10 your period of time as plant manager it was your  
11 understanding that there were no health risks to the  
12 residents of Saint Louis Park that could follow from  
13 coal tar or creosote or any of the products used by  
14 Kelly Tar in its processes?

15 A. That is correct. You mean in the drinking  
16 water, et cetera?

17 Q. Drinking water.

18 A. Yes.

19 (At this time Saint Louis Park Deposition  
20 Exhibit 9 was marked for identification by  
21 the Court Reporter.)

22 BY MR. HINDLRAKE:

23 Q. Showing you Saint Louis Park Deposition  
24 Exhibit 9, this is on the letterhead of the Minnesota  
25 Pollution Control Agency dated April 1970 entitled,

1 A. You mean solely?

2 Q. No, not solely but as one of the ways?

3 A. That was a method of communication, sure.

4 Q. As a matter of practice would you have

5 prepared the internal memoranda around the time of the  
6 events described in the memoranda; in other words, they  
7 were contemporaneous to the things ongoing in  
8 Minneapolis or Saint Louis Park at the time?

9 A. Yes.

10 Q. I take it it was a company policy to use  
11 memoranda as a form of communication, as one of the  
12 ways of communicating from the Saint Louis Park  
13 operation to the headquarters in Indianapolis?

14 A. That is correct. Right, it doesn't say it.

15 Q. Looking at the fourth paragraph on the first  
16 page, the paragraph starts out, "Should the toxic come  
17 out about the supposed contamination of the areas to  
18 the south of the plant." My question is after you  
19 reread the paragraph what area are you referencing to  
20 the south of the plant?

21 A. Walker Street to probably Lake Street or  
22 Highway 7, in that area.

23 Q. Okay. Then you go on to say, "Any possible  
24 contamination on our part would be remedied by natural  
25 forces over a period of time." Would you explain that

1 for me, how that occurs?

2 A. Well, you have biodegradation, you know, you  
3 break things down, you spread things out. Nature has a  
4 wonderful faculty to repair and replace, put things  
5 back in the order its -- its own order, that's what I  
6 meant.

7 Q. And your understanding of that process is  
8 that would be done without harmful consequences either  
9 to the environment or to people?

10 A. To the best of my knowledge, yes.

11 Q. The next paragraph of the letter or of the  
12 memorandum, "Should the topic of removal of supposed  
13 contaminated ground", and then you go on to make some  
14 more recommendations. From your understanding of the  
15 situation would any coal tar or creosote or the  
16 products of Reilly Tar that were in the ground, would  
17 that also be remedied by natural forces, that is, would  
18 that also degrade naturally?

19 A. Yes, that would have been my opinion. Yes.

20 Q. Was it your opinion then that if there was  
21 those products in two or three or four inches of soil  
22 on the plant as you have described, that should the  
23 plant stop and if nothing was done to the soils that  
24 over time there would be a natural improvement of those  
25 soils because of biodegradation?

1 facility doing this?

2 A. No, when Chattanooga was doing it it was very  
3 experimental at that time. As I said before, we were  
4 looking into a lot of things. A lot of people were  
5 looking into a lot of things. Since that time the  
6 American Wood Preserving Institute, which is a division  
7 of the American Wood Preserving Association, did a lot  
8 of work along that line, a lot of experimental work for  
9 the industry and a lot of recommendations for the  
10 industry. So time has evolved and processes have  
11 evolved.

12 Q. Would this work at the Chattanooga refinery  
13 plant have been prior to your retirement as plant  
14 manager at Reilly Tar?

15 A. I think they were doing that at that time,  
16 yes. I don't know exactly what it was but I do recall  
17 that sort of thing.

18 (At this time Saint Louis Park Deposition  
19 Exhibit 11 was marked for identification by  
20 the Court Reporter.)

21 BY MR. HINDERAKER:

22 Q. Mr. Finch, Exhibit 11 of Saint Louis Park is  
23 another Reilly Tar memorandum of December 14, 1970.  
24 Again, the reference you notice is the December 7  
25 meeting in the offices of the Pollution Control Agency

1 to discuss air and water pollution in relation to the  
2 Saint Louis Park plant. If you would take whatever  
3 time necessary to review the exhibit, please.

4 A. I sure as hell was wordy, wasn't I? A member  
5 of your firm was there too, huh? Maybe we should get  
6 Mr. Popham in here to verify all this.

7 (At this time a brief recess was taken.)

8 BY MR. HINDERAKER:

9 Q. We took a little break. To get back in  
10 context here I showed you Saint Louis Park Exhibit 10?

11 A. Right.

12 Q. Which was the internal memorandum of December  
13 3, 1970 and then before the break I gave you Saint  
14 Louis Park Exhibit 11, did I not?

15 A. Yes, you did.

16 Q. Did you get a chance to read that?

17 A. I read it.

18 Q. Exhibit 11 is a report by you to Mr. Ryan  
19 summarizing the meeting at the Pollution Control Agency  
20 of December 7?

21 A. Yes.

22 Q. And the Exhibit 10 is a memorandum by you to  
23 Mr. Ryan by way of preparation for the December 7  
24 meeting?

25 A. Right.

1 Q. Start on the first page, the third paragraph,  
2 last sentence of that paragraph you report that, "i.e  
3 briefly attempted to report what we had done and what  
4 we were proposing to do with regard to the air and the  
5 water." My question is what was that at the time?

6 A. What had we done?

7 Q. What were you proposing to do?

8 A. Well, I think we proposed an Eden separator  
9 and attachments for water and burning -- and possible  
10 burning of air and also the -- I shouldn't say air,  
11 burning of odor causing contaminants of the air, things  
12 in the air from the processing, and we also had a  
13 scrubber to take things out of the air. I think it was  
14 all those things that we were proposing to do.

15 Q. So one of your focuses was a response to the  
16 odor issue?

17 A. One was odor and the other was water.

18 Q. The odor with regard to the Eden separator or  
19 otherwise was with regard to controlling the plant's  
20 effluent?

21 A. Processing water, that is correct, also going  
22 into the city sewer, I believe we discussed that, not  
23 the storm sewer but the sanitary sewer with our process  
24 water.

25 Q. And the discussion about water was directed



1 at ways of controlling the plant process water and was  
2 there also a discussion about the surface waters?

3 A. Yes, I felt that the surface water would be  
4 no problem once the city had stopped directing their  
5 storm water into the plant proper.

6 Q. This is the drainage of rain or storm water  
7 from the city streets?

8 A Surrounding community, right.

9 Q. Going to the second page of Saint Louis Park  
10 Exhibit 11, I see in the first full paragraph that you  
11 attempted to point out that the natural forces should  
12 clean up any contaminants present in the marshy area?

13 A. The city was emphasising -- Mr. Cherches was  
14 emphasising strongly the ground contamination there in  
15 the last paragraph of the first page and I was expounding  
16 on my knowledge of nature.

17 Q. And was the discussion at this meeting  
18 similar to what you have described to me right before  
19 the break about biodegradation of the creosote and coal  
20 tar?

21 A. That is correct.

22 Q. And you were conveying to them and have  
23 conveyed to me your --

24 A. I guess you had said something there that I  
25 really didn't say and that was the biodegradation of coal

1 tar. I don't believe I ever mentioned coal tar as  
2 being biodegradable, it's the lighter constituents of  
3 coal tar that I was talking about. Coal tar has carbon  
4 which is not biodegradable and a large part of coal tar  
5 is carbon.

6 Q. With regard to whatever was in the soils at  
7 the Kelly plant, was it your understanding that those  
8 soils would improve naturally overtime?

9 A. It was my understanding.

10 Q. And that was a believe that you conveyed to  
11 me today and at this meeting on December 7 at the  
12 Pollution Control Agency?

13 A. Yes, I conveyed that to the concerns of the  
14 City of Saint Louis Park which they were talking about  
15 and asking about and certainly that was a big concern  
16 on their part. I gave them my honest opinion.

17 Q. Then I want to turn for a minute to Page 3 of  
18 Saint Louis Park Exhibit 11. The first full paragraph,  
19 do you see the last phrase of that paragraph, "nonleaching  
20 quality". Take a moment to read the full context but  
21 my question will be to ask you your meaning and what  
22 you were getting at by "nonleaching quality"?

23 A. Okay.

24 Q. What does nonleaching quality mean in this  
25 context of creosote oil?

1 going on, contamination of ground water, the State was  
2 concerned about the contamination, had been since 1932  
3 or '33.

4 Q. They had that concern. Did the City or the  
5 State ever suggest to Reilly Tar that Reilly remove or  
6 do any remedial efforts directed at ground water or the  
7 city drinking supply?

8 A. Other than the meetings we had where they  
9 said that they were going to have to remove soil and so  
10 forth, probably saying we were going to have to bare  
11 that expense, we were going to have to bare the expense  
12 for the storm sewer that we were told that that was  
13 highly a possibility, that if they brought that up to  
14 the voters, the voters would be really antagonistic  
15 towards us and that sort of pressure was used by your  
16 client.

17 Q. Did you understand that pressure to be for  
18 the purpose of foreclosing or responding to the  
19 possibility of future contamination of the drinking  
20 water supply of Saint Louis Park?

21 A. I believed what they said. I believe that  
22 they had honest concerns. They wouldn't have come out  
23 at me. I don't necessarily know that their concerns  
24 were accurate but I believe they are honest concerns.  
25 I think the -- I know that at least some of the people

530  
1 consultant or resource person for Reilly Tar with  
2 regard to its dealings with the City and the State  
3 after August of '72?

4 A. Not that I recall. Somebody might ask me  
5 about a conversation I had or something but I don't  
6 recall that. It wasn't of significance. What did you  
7 want me to do with this document that you have given me  
8 here? If I don't have to read it I would just as soon  
9 not read it.

10 Q. Well, I have to think about this for a second,  
11 if there is anything to do with this document.

12 A. I certainly don't know what OSI Consulting  
13 Engineers are.

14 Q. Well, let's forget about the document itself.  
15 It happens to make some statements and I will simply  
16 ask not for your review of the document but simply for  
17 your understanding of the situation with regard to a  
18 couple topics that the document happens to raise. For  
19 example, was it your understanding while plant manager  
20 for Reilly Tar that the most important hazard of  
21 phenols in the drinking water supply is the strong  
22 taste and odor that the phenols present to the water?

23 A. I have to say that's correct.

24 Q. And was it your belief during the time you  
25 were plant manager that even if there ever were phenols

1 in the ground water or the drinking water supply of  
2 Saint Louis Park that there was no health danger  
3 resulting from that?

4 A. I know -- I had understood, as pointed out in  
5 that document, that you wouldn't drink it.

6 Q. because of the odor and taste?

7 A. Yes, just couldn't hack it.

8 Q. Was it your understanding while plant manager  
9 that it was highly unlikely that the City water supply  
10 was in danger of being polluted by phenols from the  
11 Republic site?

12 A. That was my opinion.

13 Q. Was it your belief or understanding that the  
14 more important concern with regard to any phenols in  
15 water was in respect to the discharge of surface waters  
16 into Minnehaha Creek?

17 MR. SCHWARTZBAUER: More important than  
18 what?

19 A. I guess I would have to ask that.

20 Q. I guess I meant in the sense of the time  
21 spent in discussing what Reilly might do in response to  
22 City and State concerns. Let me back up. Wasn't there  
23 some problem with the storm sewer hook up to Minnehaha  
24 Creek in that the water going into Minnehaha Creek had  
25 to meet certain parameters?

1           A.     That was one concern of the storm sewers.  
2     The other concern was that -- that was a concern of the  
3     storm sewer.

4           Q.     And then the parameter that was causing  
5     concern was the discharge of phenols into Minnehaha  
6     Creek?

7           A.     I would imagine that is it. You are pinning  
8     it right on phenols and that's what the correspondence  
9     mainly deals with.

10          Q.     And other things may have been the amount of  
11     discharge, I mean, the quantity of water and so forth?

12          A.     We pinned it on phenols and there was a lot  
13     of stuff put in that swamp by other people too that may  
14     have been just as bad as phenols. I guess I was more  
15     concerned with the Lithium Corporation over off of  
16     Cedar Lake road and the contamination of that area over  
17     there and National Lead to the south of us than I was  
18     of our own proposition. Those two things scared me  
19     more as a citizen than what we had. I wasn't scared  
20     what we were doing.

21          Q.     And then only with respect to matters  
22     directed specifically at Reilly Tar, that concern was  
23     phenols, correct?

24          A.     That's the thing we were testing for and so  
25     forth, yes, sir.

1 (At this time Saint Louis Park Deposition  
2 Exhibit 15 was marked for identification by  
3 the Court Reporter.)

4 BY MR. HINDERAKER:

5 Q. Mr. Finch, Saint Louis Park Exhibit 15 is a  
6 summons and complaint dated October 2, 1970. I wish  
7 you would look at it but my question will be whether  
8 you have seen it before?

9 A. Allen, I might have seen it. It's all within  
10 the scope of what might have happened. I don't  
11 specifically recall the document but I seem to recall  
12 that the State of Minnesota Pollution Control Agency  
13 was doing something. This is versus the City of Saint  
14 Louis Park. No, versus Reilly Tar & Chemical, both you  
15 fellows are suing Reilly Tar & Chemical?

16 Q. Yes.

17 A. I probably was there and if that came across  
18 my office I probably forwarded it to Indianapolis. I  
19 don't specifically recall. Did you get that?

20 MR. REIERSGORD: Eventually.

21 THE WITNESS: Okay. Strike that.

22 BY MR. HINDERAKER:

23 Q. I would like you to look at it for a moment,  
24 Mr. Finch.

25 A. Yes, sir.

1 Exhibit 17 was marked for identification by  
2 the Court Reporter.)

3 BY MR. HINDERAKER:

4 Q. Mr. Finch, showing you Saint Louis Park  
5 Deposition Exhibit 17, a letter of February 23, 1971,  
6 was this letter written by you?

7 A. Yes, sir.

8 Q. You are writing to the general manager  
9 purchases and sales of Chicago, Milwaukee, Saint Paul  
10 and Pacific Railroad and advising him of Reilly Tar's  
11 decision to close its Saint Louis Park operations?

12 A. Right.

13 Q. So I take it by at least February 10, 1971,  
14 the company had come to the decision that the  
15 operations at Saint Louis Park would be closed?

16 A. Yes, sir.

17 Q. And looking at the second page, if you would  
18 read that, please, and my question is whether Reilly  
19 Tar was willing to sell the property to anyone  
20 interested in buying it at the appropriate price?

21 A. Well, it shows why we are considering it.

22 Q. All right.

23 A. The sale, and shows that we had offered the  
24 property to the City of Saint Louis Park.

25 Q. And were you in fact willing to make the same



1 Q. It's a little difficult to read and it's  
2 fortunately short. Could you read what it says?

3 A. Sure.

4 Q. Okay.

5 A. "Tom Feiersgord would not want the company to  
6 make an offer but he would submit the terms as a means  
7 of possible settlement of the pending lawsuit. In  
8 talking to the City the first selling points listed on  
9 the -- ", I don't know what that word is -- "would be  
10 used".

11 Q. And after the heading subject the first word  
12 is?

13 A. "Proposed terms of sale to City."

14 Q. Do you have the recall of having an  
15 understanding of how a sale to the City would be a  
16 means of possible settlement?

17 A. Ask that in a different way, Allen.

18 Q. Was it your understanding that if the  
19 property was sold and Reilly Tar goes out of business  
20 in Saint Louis Park that the lawsuit would be settled?

21 A. Yes, sir. The terms of sale would do that,  
22 correct. I think we were also assured that lawsuits by  
23 any other governmental body would be set aside also.

24 Q. We will get to some of that.

25 (At this time Saint Louis Park Deposition

1 Exhibit 19 was marked for identification by  
2 the Court Reporter.)

3 BY MR. HINDERAKER:

4 Q. Mr. Finch, let me show you Saint Louis Park  
5 Exhibit 19. The first question is if you can tell me  
6 what it is?

7 MR. SCHWARTZPAUER: Off the record.

8 (At this time a discussion was held off the  
9 record.)

10 A. The time 12:30 p.m. I see a couple  
11 references to time. Meeting with Mr. Cherches, Mr.  
12 Popham and by myself and Mr. Reiersgord. It should be  
13 by Mr. Reiersgord and myself.

14 Q. Was this prepared by you, Mr. Finch?

15 A. My initials H.L.F. are on there.

16 Q. As you are here today can you give us a time  
17 frame? Well, it's after the City's first offer anyway,  
18 we know that?

19 A. I believe so. That's what I was trying to  
20 establish. I don't remember the dates. It was not  
21 really important to me at that time. The pages are  
22 unnumbered but there are these production numbers  
23 through the discovery of the lawsuit here. Let me  
24 refer you to page --

25 Q. The page that is stamped 301492, that's two

1 or three or four in.

2 A. Let's have that again, Dennis.

3 Q. 301492. And I take it you are summarizing  
4 some of the negotiations for the possible sale of the  
5 Reilly Tar site?

6 A. What was the question?

7 Q. The question was first that the document  
8 summarizes negotiations that you had for the possible  
9 sale of the Saint Louis Park site?

10 A. I don't know if it really summarizes. It  
11 says a lot of things. It looks like I am kind of  
12 rambling on rather than summarizing it to myself.

13 Q. Let me rephrase. The document records some  
14 negotiations with the City for the potential sale of  
15 the Reilly site?

16 A. Records some discussions we had, right.

17 Q. And going to the page marked 301492. Finish  
18 reading it, I am sorry.

19 A. All right.

20 Q. I am looking about the middle of the page  
21 where you state, the letter appeared to say if we did  
22 not get together with the City and sell the property at  
23 a reduced price to the City they would slap the lawsuit  
24 back on us. Tom said that a lawsuit was moot since the  
25 suit only required that we cease and desist and we were

1 ceasing and desisting. Could you tell me more about  
2 what happened at that meeting with regard to that  
3 pressure point of the lawsuit on possible sale price?

4 A. I don't think any effect at all.

5 Q. Pardon me?

6 A. Didn't have any effect at all.

7 Q. And that was why?

8 A. It was just conversation.

9 Q. You record, "Tom said that a lawsuit was mute  
10 because the suit only required that we cease and desist  
11 and we were ceasing and desisting." Can you tell me  
12 what you understand that to mean?

13 A. That would mean we would no longer be in  
14 operation. So if we were no longer in operation and  
15 you wanted us to stop we were stopping already. Is  
16 that right, Tom? They are asking about what you said.

17 Q. Well, you were there as well, were you not?

18 A. Sure. Yes, I was there.

19 Q. And just to clarify the point for myself, was  
20 it in fact your understanding that should the company  
21 cease to do business in Saint Louis Park that there was  
22 nothing further for the lawsuit to operate against?

23 MR. SCHWARTZBAUER: Object to this on  
24 the grounds of form, calls for a conclusion and  
25 speculative.



October 18, 1969

OFFICE MEMO:

SUBJECT: Phenols in domestic water supplies

It is not likely that harmful concentrations of phenol will be consumed in drinking water as such concentrations are higher than taste considerations would allow.

The ingestion of concentrated solutions of phenol will result in severe pain, renal irritation, shock and possibly death. A total dose of 1.5 grams may be fatal. (Anon., "The Merck Index of Chemicals and Drugs." 7th ed. (1960).

The 1962 U.S. Public Health Service Drinking Water Standards. Title 42 -- Public Health, Chapter 1 -- Public Health Service, Dept. of Health, Education and Welfare; Part 72 -- Interstate Quarantine Federal Register 2152 (Mar. 6, 1962), limit the concentration of phenolic compounds to 0.001 mg/l, because of tastes resulting from the action of chlorine on such waters.

The 1958 World Health Organization International Standards (Anon., "International Standards for Drinking Water." World Health Organization, Geneva (1958), set a permissible limit of mg/l and excessive limit of 0.002 mg/l.

The 1961 World Health Organization "European Standards for Drinking Water", World Health Organization, (1961), have recommended limit of 0.001 mg/l.

E.L. Bean, "Development of Water Quality Ideals". Journal A.W.W.A. 53,1361 (1961), recommends that the concentration of phenolic substances in drinking water be limited to 0.0005 mg/

J.E. Kinney, "Fusing the Phenol Frenzy." Proc. of 15th Industrial Waste Conf., Purdue Univ., Engrg. Bull 45:2,28 (1961), points out that the method of analysis for phenol measures not phenol alone but a whole series of organic compounds that are called "phenolics"; yet it does not measure all phenol-like compounds. Phenolics are found not only in discharges from coke plants and refineries, but also in mountain streams from decaying vegetation, in the urine of rabbits and pregnant mares, and in countless other sources.

Hoak, R.D., "Origin of Tastes and Odors in Drinking Water." Public Works, 83, December (1957). Strong medicinal odors may occur when phenol concentration is 0.002 mg/l, yet at other times when the phenol concentration was over 0.050 mg/l there were no tastes or odors.

EXHIBIT 11



## INTER-OFFICE CORRESPONDENCE

## REILLY TAR &amp; CHEMICAL CORPORATION

TO: MR. T. J. RYAN - INDPLS. OFFICE: St. Louis Park, Minn.  
FROM: Mr. H. L. Finch DATE: December 14, 1970  
SUBJECT: DECEMBER 7TH MEETING IN THE OFFICES OF THE POLLUTION CONTROL AGENCY TO DISCUSS AIR AND WATER POLLUTION IN RELATION TO THE ST. LOUIS PARK PLANT.

The meeting was held in the offices of the State of Minnesota Pollution Control Agency on 717 Delaware Street, Minneapolis, Minnesota. Those present were Mr. Robert J. Lindall, Special Assistant Attorney General, State of Minnesota; Mr. Wayne G. Popham, a member of the firm of Popham, Haik, Schmobrich, Kaufman and Doty, Mr. Popham is an attorney for the City of St. Louis Park; Mr. Chris Churches, City Manager, St. Louis Park; Mr. Harvey Mc Phee, City of St. Louis Park Sanitation Department; Mr. George R. Kounce, Chief Section of Industrial and Other Wastes, Minnesota Pollution Control Agency; Mr. Tibor Kosa, Chief Engineering and Enforcement Section, Air Quality Division, Minnesota Pollution Control Agency, there was also a gentleman by the name of Mr. Smith who was interested in these proceedings strictly from the standpoint of discharge of water into the Minnehaha Creek water shed.

There was also several other gentlemen present, Mr. Mc Phee had an assistant from the St. Louis Park Health Department, Mr. George Kounce had an assistant for his division and Mr. Tibor Kosa had an assistant for his division but we did not note their names.

We will try to report some of the exchanges of the meeting but not necessarily in the order in which they occurred. Mr. Lindall opened the meeting with the request to us to explain how we intended to solve the problem of the company's polluting the air and water in St. Louis Park. We briefly attempted to report what we had done and what we were proposing to do with regard to the air and the water.

Mr. Churches brought up the subject of the reported contaminated marshes to the south of our property and immediately south of Highway #7 in which plant discharge has been made for a period of years. His contention is that the City will be unable to storm sewer this area and be assured that no contaminants from the soil will enter the storm sewer to be discharged into Minnehaha Creek. The City has recently had occasion to install a force sewer main in Lake Street located just south of Highway #7 adjacent to the ponding marshes. The force sewer is coming from the City of Hopkins and will be directed into the St. Louis Park system and then into the City of Minneapolis sanitary sewer system. During the digging operations for the storm sewer Mr. Churches, verified by Mr. Mc Phee, reported there were strong creosote odors and black oily material the depth of the sewer. It might have been mentioned around eighteen feet, I do not recall the depths they were speaking of. Mr. Churches kept pushing on the possible contamination

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of any storm sewer installation, substantiating with Mr. Smith that if the City did install say a \$4,000,000.00 sewer project and if contaminants entered the storm sewer that the storm sewer could not be dumped into Minnehaha Creek. Practically each time we discussed our connection with the sanitary sewer Mr. Churches would get back on the problem of the marshes. Mr. Churches seemed to have this as his point.

We attempted to point out that our connection to the City's sanitary sewer with the process water from the plant should eliminate any further contaminants from getting into the ponding area to the south. We also attempted to point out that the natural forces should clean up any contaminants present in the marshy area. It was suggested that we continue with our program to go into the City's sanitary sewer and then take a look at the marshy area to the south of the plant after a five year period and see if the same problem still existed. Mr. Churches's reaction was that five years was an entirely too long a period to even consider. From Mr. Churches's reaction, it appeared that the storm sewer installation was of urgent importance to the area.

Mr. Mc Phee claims that there is a route by which the water can cross Lake Street after the flowage from plant property under Highway #7 to the ponding area south of Highway #7. It has been my understanding that the only way water could cross Lake Street was to flood over it. And in fact, quite a number of years ago I was highly concerned about the City having blocked off the drainage under Lake Street, thereby reducing the total ponding area available to the plant. I can recall discussing the blocking of Lake Street with the then Mayor of St. Louis Park, Mr. Wolf. Mr. Wolf's reaction to my objection to the reduced drainage from the plant was that this would help prevent any of the plant water going into Minnehaha Creek. The handwriting on the wall indicated that I may have gotten into a mess had I pursued the matter any further. Mr. Mc Phee rather brushed over the point of the water being able to get on the other side of Lake Street and I still am not sure if it makes too much difference to us whether our drainage has access under Lake Street or not.

Mr. George Kounce would interject his great concern for the soil contamination within the plant property. Mr. Kounce brought up the old contention that drainage from the property helped to contaminate a St. Louis Park well some thirty years ago. And, he referred several times to the dripping of creosote on the ground from the stored pile and from the tram cars. He made reference at one time to the depth that this material had penetrated the ground and explained he did not know to what extent this had taken place. In reference to Mr. Kounce's challenge with regard to the contamination of the St. Louis Park well,

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it was reminded that the period of well contamination took place at about the time the Minnesota State Highway was constructing Highway #7 across the marshy area and had utilized dynamite to remove some of the peat. We brought out the possibility that the dynamite might have opened fishers into a lower strata causing swamp water to get into otherwise fresh water.

It was pointed out also during Mr. Kounce's discussion that we utilized creosote oil for years as a weed control in the plant property which could account for some of the coloration in the ground. Mention was also made that the weed control did not have a residual effect and each year we had to spray the yard with creosote to stop the weeds. With reference to the dripping of creosote from piles, our contention was that the creosote oil did not leach out of the cross ties in any appreciable amount and that the preservative creosote has, as one of it's attributes, non-leaching qualities.

A discussion resolved around the possibility of testing the water after it had flowed over the plant property to see what contamination existed. Suggestion was made that we employ an engineer for the purpose of testing the water other than our process water. We pointed out that this would be difficult to do until we had connected to our sanitary sewer and were sure that no process water was becoming involved with runoff water. We explained that the runoff water was of a flooding nature and tests of runoff water would be difficult to determine. We probably should do some sampling of the pond directly to the south of the plant property. There is an area that is relatively isolated from that area normally receiving our discharge water.

Mr. Tibor Kosa took off on air contamination, most particularly the contamination that would result from the opening and closing of our cylinder doors. Mr. Kosa felt that this was an area that would not be too expensive to control and that we were not giving any consideration to controlling this part of our operation. His idea would be for us to set up a duct system over the cylinder doors, run this into a scrubber system and then burn the remaining fumes. He also criticized us quite severely for not submitting plans for air pollution controls. He reminded us that he had recommended that we hire a consultant to determine the extent we were in violation. He pointed out quite emphatically that they have the power to require us to hire a consultant to determine the extent of our pollution. Because of the strong stand Mr. Kosa was taking we did inform them that we had hired a consultant firm to investigate odor sources from our refinery. I told them at this time we did not wish to offer the findings of the consulting concern, Pollution Curbs as we ourselves had not had time to fully digest the report. We did tell them that we had investigated adding permanaganate to our scrubber system but that our investigation showed it would not be feasible for our particular location and product.

15-503

Mr. T. J. Ryan - Indpls. (Page 4)

A little later Mr. Lindall asked if they could at least have the cover page of the report to show that we were acting in good faith. We did give them the cover page of the report.

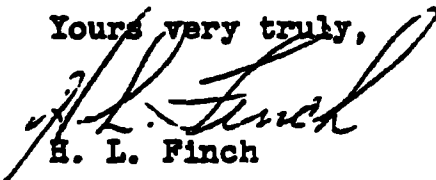
One part of the report that disturbs me considerably and why I did not feel I could give the report to them was the point under the section Conclusions and Recommendations 4.2 in which I quote the last two sentences of this paragraph which states "in any case the system evaluated" (system meaning our present scrubber) "is capable of reducing the odor level 1,000 fold. However, this reduced level of emissions still exceed the allowable M.P.C.A. emission level by the factor of 150,000,000." I thought that by the City having this at their disposal may substantiate legal action.

It is my definite recommendation that we proceed at once to prepare complete plans for submission to the City and for submission to Minnesota Pollution Control Agency concerning:

1. The connection to the sanitary sewer with the inclusion of the Edens Separator.
2. Plans for the construction of the after burner to be included as a part of our pollution control in the refinery.

It is also my recommendation that we proceed with a second program with Pollution Curbs to study the possible odor emission as a result of the opening and closing of cylinder doors. We would propose that this study would be taken at the property line to verify that this operation is in conformance with air pollution quality standards.

Yours very truly,

  
H. L. Finch

HLF:ge

cc: Mr. R. J. Boyle - Indpls.  
Mr. P. C. Reilly - Indpls.  
Mr. C. F. Leshner - Indpls.  
Mr. T. E. Reiersgord - Attorney

EXHIBIT 12

**COPY**

**REILLY TAR & CHEMICAL CORPORATION**

**MR. R. J. BOYLE - INDPLS.**

**St. Louis Park**

**Mr. H. L. Finch**

**October 15, 1970**

**POLLUTION CONTROL**

Yesterday (10-13-70) we had a call from Mr. Harvey McPhee, the City of St. Louis Park Sanitation Department informing us that Mr. Robert J. Lindall, Special Assistant Attorney General, State of Minnesota and Mr. Tibor Kosa, Chief Engineering and Enforcement Section, Air Quality Division of the Pollution Control Agency would like to visit the plant and talk with me. He called about 3:30 P.M. and I informed them that I was available. After talking to Mr. McPhee we called Mr. Reiersgord to inform him of the pending visit.

Mr. McPhee arrived with Mr. Lindall and Mr. Kosa along with Mr. McPhee's Assistant, Miss Workman. We met in my office and talked about the plant's activities relative to water and air pollution. It was expressed to Mr. Lindall that we would have appreciated the State of Minnesota and the Pollution Control Agency's notification of the pending suit before having the suit broadcasted in the papers. Mr. Lindall explained that they worked through the City and assumed that the City would notify us. He further pointed out that there had been quite a bit of correspondence between our organization and the City and thought we should have been aware of the pending action.

In brief we explained what we were trying to do in the area of air pollution. Mr. Kosa recommended that we hire a consulting firm to supply us with data pertaining to air quality and amount of emissions. He informed us that he could recommend a number of good concerns in the consulting field whose recommendations would be accepted. Our concern was expressed to him on the popularity of the word pollution and everybody seeming to have an answer when they really didn't know what the problem was. We asked him if Pollution Curbs would be a recommended agency and Mr. Kosa was very high on Pollution Curbs. Mr. Justin has been working with Pollution Curbs to set out a proposal for a study of our refinery emissions. The party of us including Mr. Justin toured the refinery still operations explaining what steps we have taken in an effort to control air emissions. Mr. Kosa mentioned that he would like to see the pan room closed off more effectively to prevent possible escape of fumes from the pan room itself. He was talking about having negative air pressure in the still room to promote the draft to our venting system. Mr. Kosa did not feel that we had too great a problem involved with the control of the fumes from the pan room. The idea of our not having too great a problem, in his opinion, could possibly have been made to support the position that we have not progressed swiftly enough in the control

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**COPY**

**REILLY TAR & CHEMICAL CORPORATION**

Mr. R. J. Boyle - Indpls. (Page 2)

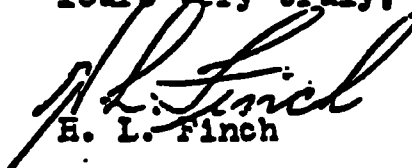
of our emissions. It again could mean that we did not have a great problem as far as the Health Department was concerned.

A visit was made to the treating operations and an explanation of the treating operation and cylinders were given. Mr. Kosa also wished to look at the treated ties in storage relative to the odor emissions from treated ties. Mr. Kosa did not make a comment on the odors coming from the treated ties but prior to his visit to the treated ties he mentioned that the concentration of treated ties in one area may be cause for problems.

On leaving Mr. Lindall asked if we had ever taken measurements of the penetration of our product into the soil on the other side of Walker Street. He was informed that we had no cause to take any measurements of this type as this was speculation made by the City.

Upon leaving Mr. Kosa expressed his desire to give us any assistance that he could and we thanked him and expressed that we would probably be calling upon him as we progressed with our controls.

Yours very truly,

  
H. L. Finch

HLF:gc

cc: Mr. T. J. Ryan - Indpls. ✓  
Mr. C. F. Leshner - Indpls.  
Mr. T. Reiersgord, Attorney  
Yngve, Yngve & Reiersgord

C342500

EXHIBIT 13



YNGVE, YNGVE & REIERSGORD  
ATTORNEYS AT LAW  
6250 WAYZATA BOULEVARD  
MINNEAPOLIS, MINN. 55416

July 23, 1971

544-8451

ANTON YNGVE  
ESTHER YNGVE  
ALBERT B. YNGVE  
THOMAS E. REIERSGORD  
MARSHALL G. ANDERSON

RECEIVED  
JUL 24 1971

C  
O  
P  
Y  
  
Office of Attorney General  
Minnesota Pollution Control Agency  
717 Delaware Street S.E.  
Minneapolis, Minnesota 55440

Re: Case No. 670767  
Calendar No. 78815  
State of Minnesota, et al vs.  
Reilly Tar and Chemical Corporation

ATTENTION: Robert J. Lindall  
Special Assistant Attorney General

Dear Mr. Lindall:

I was out of town when your letter, dated July 8, 1971, arrived concerning the calendar placement of the State's case vs. Reilly Tar and Chemical Corporation.

Perhaps you may not be aware that the company determined several months ago to close down their St. Louis Park plant and they are now in the process of doing so.

You may or may not also know that the company has offered the entire 80 acres to the city, and the city and the company are presently negotiating for the purchase of the property.

My present understanding is that the refinery portion of the operation will be discontinued in either August or September of 1971 and the wood treatment phase of the operation will be concluded in September of 1972. No new lumber has been delivered into the plant property for treatment for several months and the remaining operations are directed at completing the treatment of the lumber that was on hand when this decision was made. This decision was communicated to the city some time ago and the discussions about the sale to the city have been pending now for a number of months.

The company informed its employees of the termination of plant operations several months ago, but did not see fit to make any public announcement of this move and I do not believe that it was picked up by either of the Twin City

Robert J. Lindall  
Special Assistant Attorney General  
July 23, 1971  
Continued - Page 2

newspapers or television.

At any rate, it seems to me that the issues in the lawsuit are moot except for the possibility of the counter-claim by the company for damages by reason of the flooding by the city. However, until we have a better chance to see how the sale negotiations work out, I do not believe it would be prudent to set the case up for trial. Therefore, I would suggest that you ask the clerk to strike the case for settlement, subject to being reinstated if the anticipated settlement fails to materialize.

Very truly yours,

YNGVE, YNGVE & REIERSGORD

Thomas E. Reiersgord

dcl

cc: Wayne G. Popham



**MINNESOTA POLLUTION CONTROL AGENCY**

717 Delaware Street S.E./ Minneapolis, Minnesota 55440

June 15, 1973

JUN 19 1973

RECEIVED

Rolfe A. Worden  
Popham, Haik, Schnobrich, Kaufman & Doty, Ltd.  
4344 IDS Center  
Minneapolis, Minnesota 55402

RE: MPCA and City of St. Louis Park v. Reilly Tar and Chemical Corp.

Dear Mr. Worden:

I am writing this letter to confirm my understanding of the status of the above-entitled matter in light of our meeting today.

~~We will not be in a position to consider a dismissal of our complaint against Reilly until we have received and reviewed a proposal from the City of St. Louis Park for eliminating potential pollution hazards at the Republic Creosote site.~~ With this in mind, it has been suggested that the appropriate individuals from the PCA staff and from the City of St. Louis Park meet at their earliest mutual convenience to discuss the scope of the problems and possible alternatives for solving them.

To allow time for gathering further information and for submitting a proposal, the City of St. Louis Park will attempt to delay the closing of its real estate transaction with Reilly until August 15, 1973.

Thank you for visiting our office today to discuss this matter. Please contact the undersigned if you have any questions.

Yours very truly,

*Jack Van de North*

Jack Van de North  
Special Assistant, Attorney General  
MPCA

JV/sja





1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 FOURTH DIVISION

4 -----  
United States of America,

5 Plaintiff,

and

6 State of Minnesota, by its  
Attorney General Warren Spannaus,

7 its Department of Health, and

its Pollution Control Agency,

8 Plaintiff-Intervenor,

vs.

9 Reilly Tar & Chemical Corporation;  
Housing and Redevelopment authority

10 of Saint Louis Park; Oak Park

Village Associates; Rustic Oaks

11 Condominium Incorporated; and

Philip's Investment Company,

12 Defendants.

and

13 City of Saint Louis Park,

Plaintiff-Intervenor,

14 vs.

Reilly Tar and Chemical Corporation,

15 Defendant.

and

16 City of Hopkins,

Plaintiff-Intervenor,

17 vs.

Reilly Tar & Chemical Corporation,

18 Defendant.

Civil No.  
4-80-469

19 -----  
20  
21 The Deposition of ROLFE A. WORDEN, taken  
22 pursuant to Notice of Taking Deposition, taken before  
Kirby A. Kennedy, a Notary Public in and for the County  
23 of Hennepin, State of Minnesota, taken on the 21st day  
of April 1983, at 2000 First Bank Place East  
Minneapolis, Minnesota, commencing at approximately  
24 10:15 o'clock a.m.  
25

1 for Saint Louis Park and counsel for the State during  
2 this period.

3 " MR. POPHAM: I think your question now  
4 pending was to define a time of contact.

5 BY MR. SCHWARTZBAUER:

6 Q. Explain what he meant when he said "regular  
7 contact".

8 MR. POPHAM: I have no objection to that.

9 MR. SCHWARTZBAUER: Good.

10 A. By regular contact I would recall telephone  
11 calls once every two to three weeks and in the two  
12 months preceding the middle of June 1973.

13 Q. During those conversations did you bring the  
14 attorney for the State up to date on what was happening  
15 with respect to the sale?

16 MR. POPHAM: That would be objected to.

17 MR. COYNE: I join in the on objection.

18 BY MR. SCHWARTZBAUER:

19 Q. I am going to hand you a copy of Reilly Tar  
20 Exhibit 34. Can you tell us what that is?

21 A. Yes, it's a letter to me from Jack Van De  
22 North of the Minnesota Pollution Control Agency dated  
23 June 15, 1973.

24 MR. COYNE: We would object to the  
25 inclusion of this document among the Deposition

1 Exhibits and examination with regard to the content '69  
2 of the document.

3 MR. POPHAM: That's the position of the  
4 City also.

5 MR. SCHWARTZBAUER: If I ask him  
6 questions about it will you instruct him not to answer?

7 MR. POPHAM: If they are objectionable.

8 MR. SCHWARTZBAUER: I am just trying to  
9 find out if you think any question about this document  
10 would be objectionable.

11 MR. POPHAM: I preserved our objection  
12 to the document itself so I don't feel a need to go  
13 beyond that. I will look at your further questions  
14 simply as to whether they involve work product or  
15 privilege.

16 BY MR. SCHWARTZBAUER:

17 Q. The first sentence says, "I am writing this  
18 letter to confirm the status of the above-entitled  
19 matter concerning our meeting today." Did you have a  
20 meeting with Jack Van De North on June 15, 1973?

21 A. Either that day or the day before.

22 Q. Where was it?

23 A. It would have been at the offices of the  
24 Pollution Control Agency, the address reflected on this  
25 exhibit.



1 Q. Was there anybody else there besides Van De  
2 North?

3 A. Nobody directly involved in our meeting.

4 Q. How did you happen to go there?

5 A. I had called earlier that week and requested  
6 an appointment.

7 Q. What was the purpose for the meeting?

8 MR. POPHAM: That would be objected to.  
9 BY MR. SCHWARTZBAUER:

10 Q. What was said?

11 MR. POPHAM: That would be objected to.

12 MR. COYNE: Join in the objection.  
13 BY MR. SCHWARTZBAUER:

14 Q. By this time did the State of Minnesota have  
15 possession of the purchase agreement?

16 A. I don't recall whether they did or not.

17 Q. By this time did the Pollution Control Agency  
18 know that Saint Louis Park had taken over the  
19 responsibility for soil and water contamination?

20 MR. COYNE: Would you read back the  
21 question, please?

22 (Whereupon the requested portion of the  
23 record was read by the Court Reporter.)

24 THE WITNESS: I didn't hear the  
25 objection.

1 MR. SCHWARTZBAUER: He wanted the  
2 question read.

3 (Whereupon the requested portion of the  
4 record was read by the Court Reporter.)

5 MR. POPHAM: I will object to any  
6 response to the question that would call for either  
7 privileged or work product matter. I think this is a  
8 question, like the earlier question, if there is  
9 something from which you can answer the question that  
10 is not objectionable then you should answer it but you  
11 should not involve either of those items.

12 MR. COYNE: I would join in the  
13 objection and further object that there is no  
14 foundation for the question.

15 A. I would have to state for the record that any  
16 answer to that question would necessarily be predicated  
17 on work product and privileged communication.

18 BY MR. SCHWARTZBAUER:

19 Q. Had you told the Pollution Control Agency  
20 that Saint Louis Park had taken over responsibility for  
21 soil and water contamination?

22 MR. POPHAM: Objection.

23 MR. COYNE: Join in the objection.

24 BY MR. SCHWARTZBAUER:

25 Q. Looking at the third paragraph, Van De North

1 says to you: "To allow time for gathering further  
2 information and for submitting a proposal, the City of  
3 Saint Louis Park will attempt to delay the closing of  
4 its real estate transaction with Reilly until August 15,  
5 1973." Did the State ask you to delay the closing?

6 MR. POPHAM: Objection.

7 MR. COYNE: Join in the objection.

8 BY MR. SCHWARTZBAUER:

9 Q. What difference did it make to the State as  
10 to whether the chosing was delayed or not?

11 MR. POPHAM: Objection.

12 MR. COYNE: Join in the objection.

13 BY MR. SCHWARTZBAUER:

14 Q. Was there any suggestion on Van De North's  
15 part or your part that you meet with Reilly to discuss  
16 actions which were deemed necessary with respect to the  
17 site?

18 MR. POPHAM: Objection.

19 MR COYNE: Join in the objection.

20 BY MR. SCHWARTZBAUER:

21 Q. Among other things, the letter says in the  
22 second paragraph: "We will not be in a position to  
23 consider a dismissal of our complaint against Reilly  
24 until we have received and reviewed a proposal from the  
25 City of Saint Louis Park for eliminating potential

1 pollution hazards at the Republic Creosote site." No ,  
2 did Mr. Van De North say anything about a necessity to  
3 obtain a proposal from Reilly for eliminating pollution  
4 hazards?

5 MR. POPHAM: Objection.

6 MR. COYNE: Join in the objection.

7 BY MR. SCHWARTZBAUER:

8 Q. After talking to Mr. Van De North and getting  
9 this letter from him, did you talk to Tom Reiersgord  
10 about this?

11 A. No.

12 Q. Well, did you have conversations with him  
13 concerning the question whether the State would deliver  
14 its dismissal with prejudice as promised?

15 A. Yes, I did. I might add, to clarify the  
16 record, this letter was not received by me until the  
17 transaction would have been closed and concluded with  
18 Mr. Reiersgord.

19 Q. I see. Okay. But you apparently had had  
20 this conversation with Van De North, as you previously  
21 testified, correct?

22 A. Yes.

23 Q. Did you tell Tom Reiersgord about the  
24 conversation?

25 A. Yes.